

The **NORTH CAROLINA REGISTER**

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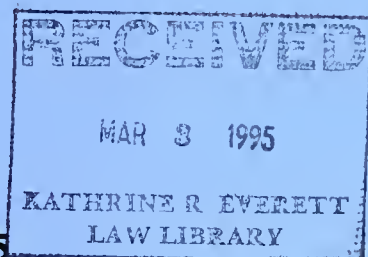
PROPOSED RULES

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Environment, Health, and Natural Resources
Human Resources
Labor
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CONTESTED CASE DECISIONS

ISSUE DATE: March 1, 1995



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Schedule
(November 1994 - September 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing 15 days from notice	* End of Required Comment Period 30 days from notice	Last Day to Submit to RRC	** Earliest Effective Date
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95
9:21	02/01/95	01/10/95	01/18/95	02/16/95	03/03/95	03/20/95	05/01/95
9:22	02/15/95	01/25/95	02/01/95	03/02/95	03/17/95	03/20/95	05/01/95
9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
10:3	05/01/95	04/07/95	04/17/95	05/16/95	05/31/95	06/20/95	08/01/95
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10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
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10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

** An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

*** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.*

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Board of Agriculture intends to amend rules cited as 2 NCAC 9B .0016; 43L .0202, .0304; adopt 2 NCAC 43L .0701 - .0702 and repeal 2 NCAC 45 .0001 - .0002.

The proposed effective date of this action is June 1, 1995.

The public hearing will be conducted at 10:00 a.m. on April 5, 1995 at the Gov. James B. Hunt, Jr. Horse Complex (Restaurant), 4601 Trinity Rd., Raleigh, NC 27607.

Reason for Proposed Action:

2 NCAC 9B .0016 - To adopt by reference federal standards for labeling meat and poultry products for safe handling.

2 NCAC 43L .0202 - To amend fees for Charlotte Farmers Market.

2 NCAC 43L .0304 - To amend fees for Western North Carolina Agricultural Center.

2 NCAC 43L .0701 - .0702 - To establish fees for the Piedmont Triad Farmers Market.

2 NCAC 45 .0001 - .0002 - To repeal unnecessary rules.

Comment Procedures: Interested persons may present their statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

CHAPTER 9 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 9B - RULES AND STANDARDS ADOPTED BY REFERENCE

.0016 ADOPTIONS BY REFERENCE

(a) The Board adopts by reference in accordance with G.S. 150B-14(c) "Official Methods of Analysis of AOAC" published by the Association of Official Analytical Chemists.

(b) The Board adopts by reference in accordance with G.S. 150B-14(c) the "U.S. Pharmacopeia National Formulary USP XXI-NFXVI" and supplements published by the U.S. Pharmacopeial Convention, Inc.

(c) The Board adopts by reference in accordance with G.S. 150B-14(c) the "ASTM Standards on Engine Coolants", published by the American Society for Testing Materials.

(d) The Board adopts by reference in accordance with G.S. 150B-14(c) the following publications:

- (1) "EPA Manual of Chemical Methods for Pesticides and Devices", and supplements published by AOAC;
- (2) "Pesticide Analytical Manual," Volumes I and II, published by the United States Department of Health, Education and Welfare, Food and Drug Administration;
- (3) "FDA Compliance Policy Guides," published by the United States Department of Health, Education and Welfare, Food and Drug Administration;
- (4) "Bergey's Manual of Determinative Bacteriology," R. E. Buchanan and N. E. Gibbons, Editors, Williams & Wilkins Company, Baltimore;
- (5) "Microbiology Laboratory Guidebook," published by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Meat and Poultry Inspection Program, Washington, D.C.;
- (6) "FDA Bacteriological Analytical Manual," published by the Association of Official Analytical Chemists;
- (7) "Standard Methods for the Examination of Dairy Products," E. H. Marth, Editor, published by the American Public Health Association;
- (8) "Compendium of Methods for the Microbiological Examination of Foods," M. L. Speck, Editor, published by the American Public Health Association;

- (9) "Bergey's Manual of Systematic Bacteriology," Vol. 1, Kreg and Holt, Editors, William E. Wilkens Company, Baltimore;
 - (10) "Manual of Clinical Microbiology", E. H. Lennette, Balows, et al., Editors, published by the American Society for Microbiology;
 - (11) "Standard Methods for the Examination of Water and Waste Water", published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation.
- (e) The Board adopts by reference in accordance with G.S. 150B-14(c) the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter A (General), as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	<u>Part</u>	<u>Subject of Part</u>
(1)	1.1	General
(2)	1.3	Labeling - Definitions
(3)	1.20	Presence of Mandatory Label Information
(4)	1.21	Failure to Reveal Material Facts
(5)	1.24	Exemptions from Required Label Statements
(6)	1.31	Package Size Savings
(7)	1.35	"Cents-off," or Other Savings Representations
(8)	2.25	Grain Seed Treated with Poisonous Substances; Color Identification to Prevent Adulteration of Human and Animal Food
(9)	2.35	Use of Secondhand Containers for the Shipment or Storage of Food and Animal Feed
(10)	7.12	Guaranty
(11)	7.13	Suggested Forms of Guaranty
(12)	70	Color Additives
(13)	70.3	Definitions
(14)	70.5	General Restrictions on Use
(15)	70.10	Color Additives in Standardized Foods, New Drugs, and Antibiotics
(16)	70.11	Related Substances
(17)	70.20	Packaging Requirements for Straight Colors (Other Than Hair Dyes)
(18)	70.25	Labeling Requirements for Color Additives (Other Than Hair Dyes)
(19)	73	Listing of Color Additives Exempt from Certification
(20)	74	Listing of Color Additives Subject to Certification
(21)	81	General Specifications and General Restrictions for Provisioned Color Additives for Use in Foods, Drugs and Cosmetics
(22)	82	Listing of Certified Provisionally Listed Colors and Specifications

(f) The Board incorporates by reference, including subsequent amendments and editions of the referenced materials, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter B (Food for Human Consumption), as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug and Cosmetic Act:

	<u>Part</u>	<u>Subject of Part</u>
(1)	100	General
(2)	101	Food Labeling (Except 101.11 and 101.103)
(3)	102	Common or Usual Name for Nonstandardized Foods
(4)	103	Quality Standards for Foods with No Identity Standards
(5)	104	Nutritional Quality Guidelines for Foods
(6)	105	Foods for Special Dietary Use
(7)	106	Infant Formula Quality Control Procedures
(8)	107	Infant Formula
(9)	108	Emergency Permit Control
(10)	109	Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material
(11)	110	Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food

PROPOSED RULES

(12)	113	Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers
(13)	114	Acidified Foods
(14)	123	Frozen Raw Breaded Shrimp
(15)	129	Processing and Bottling of Bottled Drinking Water (Except as amended by 2 NCAC 9C .0700 - Bottled Water)
(16)	130	Food Standards: General
(17)	131	Milk and Cream
(18)	133	Cheeses and Related Cheese Products
(19)	135	Frozen Desserts
(20)	136	Bakery Products
(21)	137	Cereal Flours and Related Products
(22)	139	Macaroni and Noodle Products
(23)	145	Canned Fruits
(24)	146	Canned Fruit Juices
(25)	150	Fruit Butters, Jellies, Preserves, and Related Products
(26)	152	Fruit Pies
(27)	155	Canned Vegetables
(28)	156	Vegetable Juices
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(46)	179	Irradiation in the Production, Processing and Handling of Food
(47)	180	Food Additives Permitted in Food on an Interim Basis or in Contact with Food Pending Additional Study
(48)	181	Prior-Sanctioned Food Ingredients
(49)	182	Substances Generally Recognized as Safe
(50)	184	Direct Food Substances Affirmed as Generally Recognized as Safe
(51)	186	Indirect Food Substances Affirmed as Generally Recognized as Safe
(52)	189	Substances Prohibited from Use in Human Food
(53)	193	Tolerances for Pesticides in Food Administered by the Environmental Protection Agency

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost determined by that office.

(g) The Board adopts by reference in accordance with G.S. 150B-14(c) the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter C (Drugs: General) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	<u>Part</u>	<u>Subject of Part</u>
(1)	200	General
(2)	201	Labeling

PROPOSED RULES

- | | | |
|------|-----|---|
| (3) | 202 | Prescription Drug Advertising |
| (4) | 210 | Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding of Drugs; General |
| (5) | 211 | Current Good Manufacturing Practice for Finished Pharmaceuticals |
| (6) | 225 | Current Good Manufacturing Practice for Medicated Feeds |
| (7) | 226 | Current Good Manufacturing Practice for Medicated Premixes |
| (8) | 250 | Special Requirements for Specific Human Drugs |
| (9) | 290 | Controlled Drugs |
| (10) | 299 | Drugs; Official Names and Established Names |

(h) The Board adopts by reference in accordance with G.S. 150B-14(c) the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter D (Drugs for Human Use) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	<u>Part</u>	<u>Subject of Part</u>
(1)	300	General
(2)	310	New Drugs
(3)	312	New Drugs for Investigational Use
(4)	314	New Drug Applications
(5)	320	Bioavailability and Bioequivalence Requirements
(6)	329	Habit-Forming Drugs
(7)	330	Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded
(8)	331	Antacid Products for Over-the-Counter (OTC) Human Use
(9)	332	Antiflatulent Products for Over-the-Counter Human Use
(10)	361	Prescription Drugs for Human Use Generally Recognized as Safe and Effective and Not Misbranded: Drugs Used in Research
(11)	369	Interpretive Statements Re: Warnings on Drugs and Devices for Over-the-Counter Sale
(12)	429	Drugs Composed Wholly or Partly of Insulin
(13)	430	Antibiotic Drugs: General
(14)	431	Certification of Antibiotic Drugs
(15)	432	Packaging and Labeling of Antibiotic Drugs
(16)	433	Exemptions from Antibiotic Certification and Labeling Requirements
(17)	436	Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs
(18)	440	Penicillin Antibiotic Drugs
(19)	442	Cepha Antibiotics
(20)	444	Oligosaccharide Antibiotic Drugs
(21)	446	Tetracycline Antibiotic Drugs
(22)	448	Peptide Antibiotics
(23)	449	Antifungal Antibiotics
(24)	450	Antitumor Antibiotic Drugs
(25)	452	Macrolide Antibiotic Drugs
(26)	453	Lincomycin Antibiotic Drugs
(27)	455	Certain Other Antibiotic Drugs
(28)	460	Antibiotic Drugs Intended for Use in Laboratory Diagnosis of Disease

(i) The Board adopts by reference in accordance with G.S. 150B-14(c) the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter H (Medical Devices) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	<u>Part</u>	<u>Subject of Part</u>
(1)	809	In Vitro Diagnostic Products for Human Use
(2)	812	Investigational Device Exemptions
(3)	813	Investigational Exemptions for Intraocular Lenses
(4)	820	Good Manufacturing Practices for Medical Devices: General

- (5) 860 Medical Device Classification Procedures
- (6) 861 Procedures for Performance Standards Development
- (7) 870 Cardiovascular Devices
- (8) 882 Neurological Devices
- (9) 884 Obstetrical and Gynecological Devices
- (10) 895 Banned Devices

(j) The Board adopts by reference in accordance with G.S. 150B-14(c) the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter E (Animal Drugs, Feeds, and Related Products) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

<u>Part</u>	<u>Subject of Part</u>
(1) 500	General
(2) 501	Animal Food Labeling
(3) 502	Common or Usual Names for Nonstandardized Animal Foods
(4) 505	Interpretive Statements Re: Warnings on Animal Drugs for Over-the-Counter Sale
(5) 507	Thermally Processed Low-Acid Animal Foods Packaged in Hermetically Sealed Containers
(6) 508	Emergency Permit Control
(7) 509	Unavoidable Contaminants in Animal Food and Food-Packaging Material
(8) 510	New Animal Drugs
(9) 511	New Animal Drugs for Investigational Use
(10) 514	New Animal Drug Applications
(11) 520	Oral Dosage Form New Animal Drugs Not Subject to Certification
(12) 522	Implantation of Injectable Dosage Form New Animal Drugs Not Subject to Certification
(13) 524	Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification
(14) 526	Intramammary Dosage Forms Not Subject to Certification
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(17) 539	Bulk Antibiotic Drugs Subject to Certification
(18) 540	Penicillin Antibiotic Drugs for Animal Use
(19) 544	Oligosaccharide Certifiable Antibiotic Drugs for Animal Use
(20) 546	Tetracycline Antibiotic Drugs for Animal Use
(21) 548	Certifiable Peptide Antibiotic Drugs for Animal Use
(22) 555	Chloramphenicol Drugs for Animal Use
(23) 556	Tolerances for Residues of New Animal Drugs in Food
(24) 558	New Animal Drugs for Use in Animal Feeds
(25) 561	Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency
(26) 564	Definitions and Standards for Animal Food
(27) 570	Food Additives
(28) 573	Food Additives Permitted in Feed and Drinking Water of Animals
(29) 582	Substances Generally Recognized as Safe

(k) The Board adopts by reference in accordance with G.S. 150B-14(c) the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter G (Cosmetics) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

<u>Part</u>	<u>Subject of Part</u>
(1) 700	General
(2) 701	Cosmetic Labeling
(3) 720	Voluntary Filing of Cosmetic Product Ingredient and Cosmetic Raw Material Composition Statements
(4) 730	Voluntary Filing of Cosmetic Product Experiences
(5) 740	Cosmetic Product Warning Statements

(l) The Board adopts by reference in accordance with G.S. 150B-14(c) "Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities," 40 C.F.R. Part 180.

(m) The Board adopts by reference in accordance with G.S. 150B-14(c) "Definitions and Standards of Identity or Composition for Meats, Meat By-products, and Meat Food Products," 9 C.F.R. Part 319.

(n) The Board adopts by reference in accordance with G.S. 150B-14(c) "Definitions and Standards of Identity or Composition for Poultry and Poultry Products," 9 C.F.R. Sections 381.155 through 381.170.

(o) The Board adopts by reference, including subsequent amendments, Title 9, Part 317.2(1) of the Code of Federal Regulations. A copy of this material may be obtained at no cost from the Food and Drug Protection Division of the Department of Agriculture.

(p) The Board adopts by reference, including subsequent amendments, Title 9, Part 381.125(b) of the Code of Federal Regulations. A copy of this material may be obtained at no cost from the Food and Drug Protection Division of the Department of Agriculture.

Statutory Authority G.S. 106-139; 106-267; 106-267.2.

CHAPTER 43 - MARKETS

SUBCHAPTER 43L - MARKETS

SECTION .0200 - FEES: CHARLOTTE FARMERS MARKET

.0202 GATE FEES

The following gate fees shall be paid upon entering the market:

	Day	Week
(1) Retail Shed A		
(a) March through December	\$ 6.00	\$ 25.00 <u>30.00</u>
(b) January through February	5.00	
(c) May <u>March</u> through September <u>December</u> - Saturdays only	7.00	
(d) North Carolina farmers shall not be subject to the charges set forth in Sub-item (1)(c) of this Rule.		
(e) <u>Out of state sellers</u>	<u>10.00</u>	
(2) Retail Building B		
(a) March through September	7.00	30.00
(b) October through February	7.00	25.00
(c) May <u>March</u> through September <u>December</u> - Saturdays only	10.00	
(d) North Carolina farmers shall not be subject to the charges set forth in Sub-item (2)(c) of this Rule.		
(e) <u>Out of state sellers</u>	<u>10.00</u>	
(3) Retail Building C	5.00	
(4) Eighteen Wheelers	8.00	
(5) Deliveries	4.00	
(6) <u>Truckers Shed</u>	<u>6.00</u>	

Statutory Authority G.S. 106-22; 106-530.

SECTION .0300 - FEES: WESTERN NORTH CAROLINA HORSE AND LIVESTOCK FACILITY FEE SCHEDULE

.0304 HORSE FACILITY

(a) Fees for non-livestock events are as follows:

- (1) Fees for use of the show arena are ~~six~~ eight hundred dollars (~~\$600.00~~) (\$800.00) per show day or ten percent of the gate, whichever is greater, provided that for the show arena to be opened before 7:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of ~~three~~ four hundred dollars (~~\$300.00~~) (\$400.00).
- (2) Fees for use of the covered practice ring shall be three hundred dollars (\$300.00) per day, provided

that it is used in conjunction with the show arena.

- (3) Fees for use of the covered arena and office shall be five hundred dollars (\$500.00) per day or ten percent of the gate, whichever is greater, provided that for the covered arena and office to be opened before 7:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of two hundred and fifty dollars (\$250.00).
 - (4) The open practice rings shall be rented at the ground rental rate as set forth in Rule .0305(e) of this Section.
 - (5) A twenty-five dollar (\$25.00) fee shall be charged for any electrical connection to facility power outlets.
 - (6) The fees set forth in Paragraph (b) of this Rule shall apply to any activity not specifically covered under this Paragraph.
- (b) Fees for livestock events are as follows:
- (1) Fees for use of the show arena are ~~five~~ six hundred ~~and fifty~~ dollars ~~(\$500.00)~~ (\$650.00) per show day or ten percent of the gate, whichever is greater; provided that for the show arena to be opened before ~~6:00~~ 7:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of ~~two~~ three hundred and fifty dollars ~~(\$250.00)~~ (\$350.00). Rental of the show arena shall include the covered practice ring. The open practice ring adjacent to show arena may be rented for one hundred dollars (\$100.00) per show day provided it is used in conjunction with the show arena. This ring may be rented separately for two hundred dollars (\$200.00) per show day, provided it does not interfere with an event taking place in the show arena.
 - (2) Fees for use of the covered arena and office shall be four hundred dollars (\$400.00) per day or ten percent of the gate, whichever is the greater, provided that for the covered arena and office to be opened before 7:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of two hundred dollars (\$200.00). Rental of the covered arena and office includes the opened practice ring adjacent to the covered arena and office.
 - (3) Fees for stalls are as follows:

Days	Fees
(A) 1	\$12.00; \$10.00 minimum for youth show;
(B) 2	\$20.00;
(C) 3	\$26.00;
(D) 4	\$32.00;
(E) 5	\$36.00; and
(F)	\$3.00 per additional day thereafter.
 - (4) Agricultural youth organizations may receive a 50 percent discount for stall rentals and a 25 percent discount on show arena rental when participation is restricted to youth. Educational clinics and seminars may receive a 50 percent discount on show arena and covered practice ring rates when left in clean condition. The Agricultural Center Manager will decide what qualifies as educational clinics and seminars.
 - (5) A fee of seventy-five dollars (\$75.00) per day is required for use of the facility's jumps.
 - (6) A fee of twenty-five dollars (\$25.00) per hour is required for use of the facility's motorized grounds equipment. Fee shall include operator.
 - (7) Fees for use of the facility's office equipment, if available, is charged on an expense incurred basis.
 - (8) Fees for security and other support services at any event are charged on a cost plus ten percent basis. The need for security is to be determined by facility management in consultation with show management.
 - (9) A fee of ten dollars (\$10.00) per night is required for any camper parking overnight on facility grounds. Any horse trailer connected to a power outlet at the facility will be charged the same fee as a camper.
 - (10) Miscellaneous horse facility equipment is available according to the following fee schedule:
 - (A) metal livestock panels - three dollars (\$3.00) each per show;
 - (B) small livestock panels - one dollar (\$1.00) per panel or if installed, four dollars (\$4.00) per pen;
 - (C) center ring set-up - thirty-five dollars (\$35.00);
 - (D) removal of end gates - fifty dollars (\$50.00);

- (E) farm wagon for staging - twenty-five dollars (\$25.00) each;
- (F) chairs - forty cents (\$0.40) each per day;
- (G) tables - two dollars (\$2.00) each per day;
- (H) paper table coverings - thirty-five cents (\$0.35) each;
- (I) portable PA system - twenty-five dollars (\$25.00) per event;
- (J) wireless mike system - twenty-five dollars (\$25.00) (batteries not included);
- (K) 9 volt batteries - one dollar (\$1.00) each;
- (L) podium - ten dollars (\$10.00) per day;
- (M) projection screen - ten dollars (\$10.00) per day;
- (N) slide projector - thirty dollars (\$30.00) per day;
- (O) two-way radio - twenty-five dollars (\$25.00);
- (P) VHF hand held transceiver - six dollars (\$6.00) each per day.
- (11) A fee of twenty-five dollars (\$25.00) per concessionaire is required.
- (12) A lessee must have prior approval of the Agricultural Center Manager before catering services will be allowed on the grounds. A fifty dollar (\$50.00) fee is charged for catering services that serve no more than 200 plates. For each plate served in excess of 200 plates, a fee of thirty-five cents (\$0.35) per plate shall be charged.
- (13) Auditing of ticketed events: seven dollars (\$7.00) per hour for ticket sellers, six dollars (\$6.00) per hour for ticket takers and securing doors and ten percent administrative charge.
- (14) There will be a charge of ten dollars (\$10.00) per hour for the facility to be opened with minimum lighting after 5:00 p.m. the day prior to a show event.

Statutory Authority G.S. 106-22; 106-530.

SECTION .0700 - FEES - PIEDMONT TRIAD FARMERS MARKET

.0701 PAYMENT OF FEES

All persons using the Piedmont Triad Farmers Market shall pay the fees set forth in this Section.

Statutory Authority G.S. 106-22; 106-530.

.0702 GATE FEES

The following gate fees shall be paid upon entering the market:

- (1) Farmers Area - Wholesale:
 - (a) all vehicles less than one ton \$ 6.00 per space per day
 - (b) trucks - one ton through six wheel straight truck 7.00 per space per day
 - (c) trucks - 10 wheel (one space) 8.00 per space per day
 - (d) trucks - tractor trailer 10.00 per space per day
 - (e) trailers 6.00 per space per day
- (2) Farmers Area - Retail:
 - (a) January through December \$ 6.00 per space per day
 - (b) Off-season holding fee of seventy-five dollars (\$75.00) applies to only Christmas tree sellers.
 - (c) Sellers of out-of-state products shall pay double the above fees.
- (3) Building F (Retail): January through December \$ 7.00 per space per day
- (4) Building D (Truckers) - Excluding Farmers Area:
 - (a) wholesale daily fees:
 - (i) all vehicles through six wheel straight truck \$ 8.00
 - (ii) trucks - 10 wheel, tractor trailer 12.00
 - (b) wholesale by month:
 - (i) one to four months 125.00
 - (ii) five months and over 100.00
- (5) Delivery Fees: Wholesale Dealers, Building D, Garden Center:
 - (a) all vehicles through six wheel:
 - less than 50 packages \$ 1.00

	<u>51-300 packages</u>	<u>3.00</u>
	<u>301 or more packages</u>	<u>4.00</u>
(b)	<u>10 wheel tractor trailers:</u>	
	<u>less than 100 packages</u>	<u>3.00</u>
	<u>101-500 packages</u>	<u>5.00</u>
	<u>501 or more packages</u>	<u>7.00</u>
(6)	<u>Delivery fees for the Retail Building shall be the same as for the farmers area - wholesale.</u>	

Statutory Authority G.S. 106-22; 106-530.

CHAPTER 45 - NORTH CAROLINA CROP AND LIVESTOCK REPORTING SERVICE

.0001 PROGRAM COORDINATION

(a) ~~The North Carolina Crop and Livestock Reporting Service operates in accordance with the U.S. Crop Reporting Board by means of a cooperative agreement with the United States Department of Agriculture in order to formulate the North Carolina Crop and Livestock Reporting Service Program and adopts the following by reference:~~

- (1) ~~7 U.S.C. 411a, 475 and 476 and all regulations promulgated thereunder;~~
- (2) ~~United States Department of Agriculture regulations 1 A.R. 325-334 and 530-534;~~
- (3) ~~18 U.S.C. 1902, 1905 and 2072.~~

(b) ~~The program also provides comprehensive agricultural statistical information on a county by county basis for the State of North Carolina.~~

Statutory Authority G.S. 106-24.

.0002 PROGRAM OPERATION

~~The following are adopted by reference for purposes of program operation:~~

- (1) ~~"Scope and Methods of the Statistical Reporting Service," Miscellaneous Publication No. 1308, United States Department of Agriculture, and all Administrative and Technical Temporary Directives supplementing the main volume;~~
- (2) ~~"Crop Reporting Board Calendar," Statistical Reporting Service, United States Department of Agriculture.~~

Statutory Authority G.S. 106-24.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services

intends to amend rule cited as 10 NCAC 3E .0304.

The proposed effective date of this action is July 1, 1995.

The public hearing will be conducted at 10:00 a.m. on April 7, 1995 at the Council Building, 701 Barbour Drive, Room 201, Raleigh, N.C.

Reason for Proposed Action: To ensure patients are adequately informed upon admission about the facility's services, physician admitting privileges and grievance process.

Comment Procedures: All written comments must be submitted to Jackie Sheppard, APA Coordinator, Division of Facility Services, P.O. Box 29530, Raleigh, N.C. 27626-0530, telephone (919) 733-2342, up to and including April 7, 1995.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3E - CERTIFICATIONS OF CLINICS FOR ABORTION

SECTION .0300 - ADMINISTRATION

.0304 ADMISSION AND DISCHARGE

(a) There shall be on the premises throughout all hours of operation an employee authorized to receive patients and to make administrative decisions on their disposition.

(b) All patients shall be admitted only under the care of a physician who is currently licensed to practice medicine in North Carolina.

(c) Any patient not discharged within 12 hours following the abortion procedure shall be transferred to a general hospital.

(d) The facility shall make available in writing to all patients upon admission the following following admission and prior to obtaining the consent for surgery required by Rule .0305(a) of this Section, representatives of the clinic's management

shall provide to each patient the following information:

- (1) A fee schedule and any extra charges routinely applied;
- (2) The name of the attending physician(s) and hospital admitting privileges, if any. In the absence of admitting privileges a statement to that effect shall be included;
- (3) ~~(2)~~Instructions for post-procedure emergencies as outlined in Rule .0313(d) of this Section;
- (4) ~~(3)~~Grievance procedures a patient may follow if dissatisfied with the care and services rendered; and
- (5) ~~(4)~~The telephone number of the Complaints Investigation Branch of the Division.

Statutory Authority G.S. 14-45.1(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rule cited as 10 NCAC 26H .0401.

The proposed effective date of this action is June 1, 1995.

The public hearing will be conducted at 1:30 p.m. on March 31, 1995 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC.

Reason for Proposed Action: To create more equity and consistency in physician's payments.

Comment Procedures: Written comments concerning this rule-making action must be submitted by March 31, 1995 to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603, ATTN: Portia Rochelle, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0400 - PROVIDER FEE SCHEDULES

.0401 PHYSICIAN'S FEE SCHEDULE

Effective ~~January 1, 1993~~ January 1, 1995, physicians' services whether furnished in the office, the patient's home, a hospital, a nursing facility or elsewhere will be reimbursed based on the North Carolina Medicaid Fee Schedule, except for payments to the various Medical Faculty Practice Plans of the University of North Carolina-Chapel Hill and East Carolina University which will be reimbursed at cost and cost settled at year end. The North Carolina Medicaid Fee Schedule is based on the Medicare Fee Schedule ~~Resources~~ Resource Based Relative Value System (RBRVS), ~~(42 CFR parts 405, 413, and 415) in effect in fiscal year 1993,~~ but with the following clarifications and modifications:

- (1) A maximum fee is established for each service and is applicable to all specialties and settings in which the service is rendered. Payment is equal to the lower of the maximum fee or the providers customary charge to the general public for the particular service rendered.
- (2) Fees are established on a statewide basis using the Medicare Geographic Practice Cost Indices for the North Carolina ~~urban~~ locality.
- (3) There will be no transition period in applying the Medicaid fees whereas Medicare has a five year phase-in period.
- (4) Annual Changes in the Medicaid payments will be applied each January 1 ~~based on Medicare updates through July 1 of the previous calendar year~~ and fee increases will be applied based on the ~~forecast of the~~ forecasted Gross National Product(GNP) Implicit Price Deflator. Said annual changes in the Medicaid payments shall not exceed the percentage increase granted by the North Carolina General Assembly.
- (5) Fees for services deemed to be associated with adequacy of access to health care services may be increased based on administrative review. The service must be essential to the health needs of the Medicaid recipients, no other comparable treatment available and a fee adjustment must be necessary to maintain physician participation at a level adequate to meet the needs of Medicaid recipients.
- (6) Fees for new services are established

based on this Rule, utilizing the most recent RBRVS, if applicable. If there is no relative value unit (RVU) available from Medicare, fees will be established based on the fees for similar services. If there is no RVU or similar service, the fee will be set ~~of~~ at 75 percent of the provider's customary charge to the general public.

This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c).

Statutory Authority G.S. 108A-25(b).

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Dept of Labor/Occupational Safety & Health Division intends to amend rule cited as 13 NCAC 07A .0301.

The proposed effective date of this action is June 1, 1995.

The public hearing will be conducted at 10:00 a.m. on March 21, 1995 at the NC Department of Labor/OSH, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

Reason for Proposed Action: To bring incorporated federal OSHA rules into compliance with recent federal changes to the same standards.

Comment Procedures: Persons wanting to present oral testimony at the public hearing should provide a written statement of the proposed testimony to the Division three (3) business days prior to the hearing. Written comments will be accepted until March 31, 1995. Direct all correspondence to Jill F. Cramer, NCDOL/OSHA, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

CHAPTER 7 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

SUBCHAPTER 7A - GENERAL RULES AND OPERATIONAL PROCEDURES

SECTION .0300 - PROCEDURES

.0301 INCORPORATION BY REFERENCE

(a) The provisions for Occupational Safety and Health Act Operational Procedures - Inspections, Citations and Proposed Penalties - contained in 29 CFR 1903; Recording and Reporting Occupational Injuries and Illnesses - contained in 29 CFR 1904; Consultative Agreements - contained in 29 CFR 1908; and Rules Concerning OSHA Access to Employee Medical Records - contained in 29 CFR 1913.10, have been incorporated by reference in accordance with G.S. 150B-21.6 except that where applicable:

- (1) All references to the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq) shall mean the Occupational Safety and Health Act of North Carolina, G.S. 95, Article 16;
- (2) All references to the Occupational Safety and Health Review Commission shall mean the Safety and Health Review Board as established in G.S. 95-135;
- (3) All references to Area Offices of the Occupational Safety and Health Administration, U.S. Department of Labor, shall mean the North Carolina Department of Labor, Division of Occupational Safety and Health (or OSHA), the name used to denote the office of occupational safety and health;
- (4) All references to the Secretary or Assistant Secretary shall mean the Commissioner of the North Carolina Department of Labor or his authorized representative;
- (5) All references to Area Director, Regional Administrator, or Assistant Regional Director shall mean the Director of the Division of Occupational Safety and Health (North Carolina Department of Labor) or his authorized representative;
- (6) All references to Regional Solicitor or Solicitor of Labor shall mean the Attorney General, Labor Division, North Carolina Department of Justice;
- (7) All references to Compliance Officers shall mean State compliance safety and health officers;
- (8) All references to the Federal Rules of Civil Procedure shall mean the North Carolina Rules of Civil Procedure;

- (9) Within 29 CFR 1903.14, "Citations; notices of de minimis violations", any reference to a notice of de minimis violations is deleted as North Carolina does not have a procedure for issuance of a notice ~~or citation~~ with respect to de minimis violations which have no direct or immediate relationship to safety or health;
- (10) 29 CFR 1903.14a(c)(1) which requires the posting of a petition for modification for a period of 10 working days shall be for a period of 15 working days, and 29 CFR 1903.14a(c)(2) which refers to the failure to file an objection within 10 working days of the date of posting shall be 15 working days of the posting;
- (11) 29 CFR ~~1903.21~~ 1903.22, "Definitions", is not incorporated;
- (12) 29 CFR 1908 shall be applicable to private sector consultations, and shall be used as guidance for consultations to state and local governments in North Carolina under the State Plan;
 - (A) All references to OSHA enforcement authority shall mean State OSHA compliance;
 - (B) All references in 29 CFR 1908 which allow employers exemption from general schedule OSHA enforcement inspections shall mean programmed safety inspections; employers shall be exempt from programmed safety inspections for one year from the satisfactory completion of abatement of all hazards identified by the Consultant if the required elements of an effective safety and health program are in place. Applicable to 29 CFR 1908.5(a)(3) and 29 CFR 1908.7(b)(4);
 - (C) In 29 CFR 1908.7(b)(1) the second sentence shall read: "An on-site consultative visit shall be considered in progress in relation to the working conditions, hazards, or situations covered by the request from the beginning of the opening conference through the end of the closing conference and completion of abatement for hazards identified, except that for periods which exceed 30 days from the initiation of the opening conference, the Director may determine that

the inspection will proceed."

(b) The Code of Federal Regulations incorporated by reference in this Subchapter shall automatically include any subsequent amendments thereto as allowed by G.S. 150B-21.6.

Statutory Authority 95-133; 150B-21.6.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor, Division of Occupational Safety & Health intends to adopt rules cited as 13 NCAC 07A .0801 - .0804.

The proposed effective date of this action is June 1, 1995.

The public hearing will be conducted at 2:00 p.m. on March 21, 1995 at the NC Department of Labor/OSH, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

Reason for Proposed Action: To adopt rules to outline the informal conference procedure.

Comment Procedures: Persons wanting to make an oral presentation at the public hearing should provide a written statement of the proposed testimony to the Division 3 business days prior to the hearing. Written comments will be accepted until March 31, 1995. Direct all correspondence and questions to Jill F. Cramer, NCDOL/OSHA, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432. These Rules does not require local or state fund expenditure.

CHAPTER 7 - OSHA

SUBCHAPTER 7A - GENERAL RULES AND OPERATIONAL PROCEDURES

SECTION .0800 - INFORMAL CONFERENCE PROCEDURES

.0801 PURPOSE

This Section sets forth the rules of procedure for implementation of G.S. 95-137(b)(1) regarding an employer's request for an informal conference following the issuance of a citation to that employer.

Statutory Authority G.S. 95-133; 95-137.

.0802 TIME LIMITATIONS

(a) An employer has 15 working days from receipt of a citation to notify the Director in writing that the employer wishes to either contest under the provisions of G.S. 95-137(b)(1) or request an informal conference.

(b) The Director shall attempt to schedule the informal conference within the 15 working day contestment period. However, if the receipt of the request for an informal conference does not allow for the scheduling of the informal conference within the 15 working day contestment period, an additional 5 working days may be allowed in which to hold the informal conference.

(c) No more than 20 working days from the date of the employer's receipt of the citation shall be allowed in which to conduct an informal conference and notify the employer of the results.

(d) If an employee contests an abatement period or files a motion with the Occupational Safety and Health Review Board, no pre-contestment informal conference may be held.

Statutory Authority G.S. 95-133; 95-137.

.0803 PARTIES TO INFORMAL CONFERENCE

In addition to any employer representatives and any OSHA personnel, employees represented by a bargaining agent will be notified of the informal conference and invited to attend. Employees not represented by a bargaining agent will be notified through the posting of a notice of the informal conference, and representatives of such employees will be allowed to attend the conference at the discretion of the Director.

Statutory Authority G.S. 95-133; 95-137.

.0804 RESULTS OF INFORMAL CONFERENCE

(a) The results of an informal conference shall be a revised citation, a notice of no change or a settlement agreement.

(b) Any settlement agreement reached pursuant to the informal conference must specify that the employer agrees not to contest the citation or agreed upon penalty.

Statutory Authority G.S. 95-133; 95-137.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor, Division of Occupational Safety & Health intends to amend rule cited as 13 NCAC 07F .0201.

The proposed effective date of this action is June 1, 1995.

The public hearing will be conducted at 10:00 a.m. on March 16, 1995 at the NC Department of Labor/OSH, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603-3432.

Reason for Proposed Action: To make a conforming amendment to Subpart M, Fall Protection, and to a make a technical correction to Subpart Z.

Comment Procedures: Persons wanting to make an oral presentation at the public hearing should provide a written statement of the proposed testimony to the Division three business days prior to the hearing. Written comments will be accepted until March 31, 1995. Direct all correspondence & questions to Jill Cramer, 319 Chapanoke Rd., Suite 105, Raleigh, NC 27603-3432.

This Rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on February 15, 1995, OSBM on February 15, 1995, N.C. League of Municipalities on February 15, 1995, and N.C. Association of County Commissioners on February 15, 1995.

CHAPTER 7 - OSHA

SUBCHAPTER 7F - STANDARDS

SECTION .0200 - CONSTRUCTION STANDARDS

.0201 CONSTRUCTION

(a) The provisions for the Occupational Safety and Health Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926 as of August 2, 1993, are incorporated by reference except as follows:

- (1) Subpart C -- General Safety and Health Provisions -- Personal protective equipment, §1926.28(a) is amended to read as follows: "(a) The employer is responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employees."
- (2) Subpart D -- Occupational Health and Environmental Controls -- incorporation by reference of modified final rule for 29 CFR 1926.59, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 except that 1926.59(b)(6)(ii) is amended to read:
 "(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq*), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"
- (3) Subpart Z -- Toxic and Hazardous Substances -- incorporation of the existing standard for Bloodborne Pathogens, 29 CFR 1910.1030 ~~1130~~, excluding subparagraph (e) HIV and HBV Research Laboratories and Production Facilities, into the Safety & Health Regulations for Construction at 29 CFR 1926.1030. Final rule as published in 56 FR (December 6, 1991) pages 64175 - 64182, including Appendix A -- Hepatitis B Vaccine Declination (Mandatory) -- with corrections as published in 57 FR (July 1, 1992) page 29206, and with the following revision to the definition of Occupational Exposure under subsection (b) Definitions:
 "Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of collateral first aid duties by an employee in the areas of construction, alteration, or repair, including painting and decorating."

(b) The parts of the Code of Federal Regulations incorporated by reference in this Subchapter shall not automatically include any subsequent amendments thereto, except as follows:

- (1) Incorporation of existing General Industry Standards (Part 1910) applicable to construction work into the Safety & Health Regulations for Construction (Part 1926). Final rule as published in 58 FR (June 30, 1993) pages 35076 - 35311 and effective on December 1, 1993; correction to Appendix D to §1926.1147 as published in 58 FR (July 28, 1993) page 40468 and effective on December 31, 1993. The General Industry Standards which are applicable to the Construction Standards are as follows:
 - Subpart C -- General Safety and Health Provisions,
 - 1926.33 Access to employee exposure and medical records.
 - 1926.34 Means of egress.
 - 1926.35 Employee emergency action plans.
 - Subpart D -- Occupational Health and Environmental Control,
 - 1926.64 Process safety management of highly hazardous chemicals.
 - 1926.65 Hazardous waste operations and emergency response.
 - 1926.66 Criteria for design and construction for spray booths.
 - Subpart E -- Personal Protective Equipment and Life Saving Equipment,
 - 1926.95 Criteria for personal protective equipment.
 - 1926.96 Occupational foot protection.
 - 1926.97 Protective clothing for fire brigades.
 - 1926.98 Respiratory protection for fire brigades.
 - Subpart F -- Fire Protection and Prevention,
 - Fixed Fire Suppression Equipment
 - 1926.156 Fire extinguishing systems, general.
 - 1926.157 Fire extinguishing systems, gaseous agent.

- Other Fire Protection Systems
 - 1926.158 Fire detection systems.
 - 1926.159 Employee alarm systems.
- Subpart I -- Tools - Hand and Power,
 - 1926.306 Air receivers.
 - 1926.307 Mechanical power-transmission apparatus.
- Subpart L -- Scaffolding,
 - 1926.453 Manually propelled mobile ladder stands and scaffolds (towers).
- Subpart Y -- Commercial Diving Operations,
 - General*
 - 1926.1071 Scope and application.
 - 1926.1072 Definitions.
 - Personnel Requirements*
 - 1926.1076 Qualifications of dive team.
 - General Operations Procedures*
 - 1926.1080 Safe practices manual.
 - 1926.1081 Pre-dive procedures.
 - 1926.1082 Procedures during dive.
 - 1926.1083 Post-dive procedures
 - Specific Operations Procedures*
 - 1926.1084 SCUBA diving
 - 1926.1085 Surface-supplied air diving
 - 1926.1086 Mixed-gas diving.
 - 1926.1087 Liveboating.
 - Equipment Procedures and Requirements*
 - 1926.1090 Equipment.
 - Recordkeeping*
 - 1926.1091 Recordkeeping requirements.
 - 1926.1092 Effective date.
- Appendix A to Subpart Y - *Examples of Conditions Which May Restrict or Limit Exposure to Hyperbaric Conditions.*
- Appendix B to Subpart Y - *Guidelines for Scientific Diving.*
- Subpart Z -- Toxic and Hazardous Substances
 - 1926.1100-1926.1101 [Reserved].
 - 1926.1102 Coal tar pitch volatiles; interpretation of term.
 - 1926.1103 4-Nitrobiphenyl.
 - 1926.1104 alpha-Naphthylamine.
 - 1926.1105 [Reserved].
 - 1926.1106 Methyl chloromethyl ether.
 - 1926.1107 3,3'-Dichlorobenzidine [and its salts].
 - 1926.1108 bis-Chloromethyl ether.
 - 1926.1109 beta-Naphthylamine.
 - 1926.1110 Benzidine.
 - 1926.1111 4-Aminodiphenyl.
 - 1926.1112 Ethyleneimine.
 - 1926.1113 beta-Propiolactone.
 - 1926.1114 2-Acetylaminofluorene.
 - 1926.1115 4-Dimethylaminoazobenzene.
 - 1926.1116 N-Nitrosodimethylamine.
 - 1926.1117 Vinyl chloride.
 - 1926.1118 Inorganic arsenic.
 - 1926.1128 Benzene.
 - 1926.1129 Coke emissions.
 - 1926.1144 1,2-dibromo-3-chloropropane.
 - 1926.1145 Acrylonitrile.

1926.1147 Ethylene oxide.

1926.1148 Formaldehyde.

Appendix A to Part 1926. Designations for General Industry Standards Incorporated Into Body of Construction Standards.

- (2) Subpart D -- Occupational Health and Environmental Controls:
 - (A) Revision of Authority Citation for Subpart D of Part 1926 published in 59 FR (July 19, 1994) pages 36699 - 36700 and effective on November 1, 1994.
 - (B) Addition of 1926.61 "Retention of DOT markings, placards, and labels," published in 59 FR (July 19, 1994) pages 36699 - 36700 and effective on November 1, 1994.
 - (C) 29 CFR 1926.62, Lead in Construction. Interim final rule and appendices A through D as published in 58 FR (May 4, 1993) pages 26627-26649 and effective on October 4, 1993.
 - (D) Typographical and technical corrections at 1926.63, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21780 and 21787 and effective on September 24, 1993; corrections are to final rule for Occupational Exposure to Cadmium as originally published in 57 FR 42101 (September 14, 1992).
 - (E) Technical amendments to the existing Appendix B and addition of non-mandatory Appendix E to 1926.65, *Hazardous Waste Operations and Emergency Response* as published in 59 FR (August 22, 1994) pages 43270 - 43280 and effective on November 1, 1994.
- (3) Subpart E -- Personal Protective and Life Saving Equipment -- revision of Authority Citation for Subpart E of Part 1926; removal of 1926.104, *Safety belts, lifelines, and lanyards*; redesignation of 1926.105(a) as 1926.753, *Safety Nets* in Subpart R; removal and reservation of 1926.105; and removal of paragraphs (b), (c) and (f) of 1926.107, as published in 59 FR (August 9, 1994) page 40729 and effective on February 6, 1995.
- (4) Subpart H -- Materials Handling, Storage, Use and Disposal -- revision of Authority Citation for Subpart H of Part 1926, and revision of 1926.250(b)(2) as published in 59 FR (August 9, 1994) pages 40729 - 40730 and effective on February 6, 1995.
- (5) Subpart M -- Fall Protection -- revision of Authority Citation for Subpart M of Part 1926 and replacement of Subpart M with 1926.500, 1926.501, 1926.502, 1926.503 and non-mandatory Appendices A through E as published in 59 FR (August 9, 1994) pages 40730 - 40753 and effective on February 6, 1995, with the requirement for the use of locking snap hooks under 29 CFR 1926.500(b) [definition for Snaphook], 1926.502(d)(5), 1926.502(e)(7) and Appendix C, Part II(j)(1) having an effective date of July 1, 1995.
- (6) Subpart N -- Cranes, Derricks, Hoists, Elevators, and Conveyors -- revision of Authority Citation for Subpart N of Part 1926, and revision of 1926.550(c)(2) and 1926.550(g)(4)(i)(C) as published in 59 FR (August 9, 1994) page 40730 and effective on February 6, 1995.
- (7) Subpart P -- Excavations -- revision of Authority Citation for Subpart P of Part 1926, revision of section heading of 1926.651, *Specific excavation requirements*, and revision of 1926.651(l) as published in 59 FR (August 9, 1994) page 40730 and effective on February 6, 1995.
- (8) Subpart Q -- Concrete and Masonry -- revision of Authority Citation for Subpart Q of Part 1926, removal of 1926.701(f)(2) and removal of subparagraph designation (l) of 1926.701(f) as published in 59 FR (August 9, 1994) page 40730 and effective on February 6, 1995.
- (9) Subpart R -- Steel Erection -- revision of Authority Citation for Subpart R of Part 1926 as published in 59 FR (August 9, 1994) page 40730 and effective on February 6, 1995.
- (10) Subpart V -- Power Transmission and Distribution -- revision of Authority Citation for Subpart V of Part 1926, and revision of 1926.951(b)(4)(i) as published in 59 FR (August 9, 1994) page 40730 and effective on February 6, 1995.
- (11) Subpart Z -- Toxic and Hazardous Substances:
 - (A) Correction to 29 CFR 1926 by adding text and redesignation for *Cadmium* as published in 59 FR (January 3, 1994) page 215 and effective on April 15, 1994.
 - (B) Final rule redesignation of 1926.58 to 1926.1101, and revision of 1926.1101, *Asbestos*, including amendments to Appendix A, Appendix B, Appendix D, and Appendix F, removal of Appendix G, and amendments to Appendix H, Appendix I, and Appendix K, as published in 59 FR (August 10, 1994) pages 41131 - 41162; effective on February 1, 1995 with corresponding delayed effective dates as follows: 1926.1101(q)(3)(i) is effective July 31, 1995; 1926.1101(q)(3)(ii) is effective May 31, 1995; 1926.1101(q)(3)(iii) is effective May 31, 1995; 1926.1101(q)(3)(iv) is

effective July 31, 1995; 1926.1101(q)(3)(v) is effective May 1, 1995; 1926.1101(q)(3)(vi) is effective May 1, 1995; and 1926.1101(q)(3)(vii) is effective July 31, 1995.

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at the North Carolina Department of Labor, Division of Occupational Safety and Health. A single copy may be obtained from the Division at a cost of ten dollars and sixty cents (\$10.60) (inclusive of tax); each additional copy will be the same price.

Statutory Authority G.S. 95-131; 150B-21.6.

**TITLE 15A - DEPARTMENT OF
ENVIRONMENT, HEALTH, AND
NATURAL RESOURCES**

Wednesday, April 19, 1995
Mooresville Citizen Center
220 North Maple Street
Mooresville, NC

Wednesday, April 26, 1995
Wilson County Agricultural Center
1806 South Goldsboro Street
Wilson, NC

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rules cited as 15A NCAC 2B .0101, .0104, .0202, .0211 and .0301.

The proposed effective date of this action is August 1, 1995.

The public hearing will be conducted at 7:00 p.m. on:

Monday, March 27, 1995
Moore County Agricultural Center
707 Pinehurst Avenue
Carthage, NC

Tuesday, April 4, 1995
Southwestern Community College
Allied Health Center
Room 148A
275 Webster Road
Sylva, NC

Wednesday, April 5, 1995
Henderson County Schools
Administration Building
414 Fourth Avenue, West
Hendersonville, NC

Thursday, April 6, 1995
Broyhill Civic Center
1000 Hickory Boulevard
Hudson, NC

Tuesday, April 18, 1995
Pitt Auditorium
Wilkes Community College
Wilkesboro, NC

Reason for Proposed Action: The Water Supply Watershed Protection Rules became effective in August 1992. The rules require local governments with land use jurisdiction within surface water supply watersheds to adopt and implement land use ordinances which regulate development and control stormwater runoff, in accordance with minimum statewide standards applicable for each water supply classification. The proposed rule amendments to 15A NCAC 2B .0101, .0104, .0202, .0211 and .0301 codify new requirements and clarify the existing requirements that local governments affected by the Water Supply Watershed Protection Program follow. The amended rules are not intended to add more stringent requirements, rather, they are intended to give local governments more flexibility in implementing the program. Local governments that are currently affected by the rules and that have had their local ordinances approved by the Environmental Management Commission would not be required to make the proposed changes to the rules effective in their local ordinances.

Comment Procedures: Comments, statements, data and other information may be submitted in writing prior to the scheduled hearings or until Friday, May 12, 1995. Comments may be presented orally at the hearings. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. Copies of the proposed rules and information package may be obtained by contacting the Water Supply Watershed Protection Group

at (919) 733-5083, ext. 565. Written comments may be submitted to the Environmental Management Commission, c/o Lisa Martin, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0100 - PROCEDURES FOR ASSIGNMENT OF WATER QUALITY STANDARDS

.0101 GENERAL PROCEDURES

(a) The rules contained in Sections .0100, .0200 and .0300 of this Subchapter which pertain to the series of classifications and water quality standards shall be known as the "Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."

(b) The Environmental Management Commission, prior to classifying and assigning standards of water quality to any waters of the state, will proceed as follows:

- (1) The Commission, or its designee, will determine waters to be studied for the purpose of classification and assignment of water quality standards on the basis of user requests, petitions, or the identification of existing or attainable water uses, as defined by 15A NCAC 2B .0202, not presently included in the water classification.
- (2) After appropriate studies of the identified waters to obtain the data and information required for determining the proper classification of the waters or segments of water are completed, the Commission, or its designee, will make a decision on whether to initiate proceedings to modify the classifications and water quality standards of identified waters. In the case of the Commission's designee deciding to initiate said proceedings, the designee will inform the Commission of the decision prior to scheduling a public hearing.
- (3) In the case of a petition for classification and assignment of water quality standards according to the requirements of ~~General Statute~~ G.S. 150B-20, the

Director will make a preliminary recommendation on the appropriate classifications and water quality standards of the identified waters on the basis of the study findings or information included in the petition supporting the classification and standards changes.

- (4) The Commission will make a decision on whether to grant or deny a petition in accordance with the provisions of ~~General Statute~~ G.S. 150B-20 based on the information included in the petition and the recommendation of the Director. The Commission may deny the petition and request that the Division study the appropriate classifications and water quality standards for the petitioned waters in accordance with Subparagraph (b)(2) of this Rule.
- (5) The Director will give due notice of such hearing or hearings in accordance with the requirements of ~~General Statute~~ G.S. 143-214.1 and G.S. 150B, and will appoint a hearing officer(s) in consultation with the chairman of the Commission.
- (6) The hearing officer(s) will, as soon as practicable after the completion of the hearing, submit a complete report of the proceedings of the hearing to the Commission. The hearing officer(s) shall include in the report a transcript or summary of testimony presented at such public hearing, relevant exhibits, a summary of relevant information from the stream studies conducted by the technical staff of the Commission, and final recommendations as to classification of the designated waters and the standards of water quality and best management practices which should be applied to the classifications recommended.
- (7) The Commission, after due consideration of the hearing records and the final recommendations of the hearing officer(s), will adopt its final action with respect to the assignment of classifications, and any applicable standards or best management practices applicable to the waters under consideration. The Commission will publish such action, together with the effective date for the application of the provisions of ~~General Statute~~ G.S. 143-215.1 and 143-215.2,

as amended, as a part of the Commission's official rules.

- (8) The final action of the ~~commission~~ Commission with respect to the assignment of classification with its accompanying standards and best management practices shall contain the Commission's conclusions relative to the various factors given in ~~General Statute~~ G.S. 143-214.1(d), and shall specifically include the class or classes to which such specifically designated waters in the watershed or watersheds shall be assigned on the basis of best usage in the interest of the public.

(c) Freshwater Classifications.

- (1) Class C; freshwaters protected for secondary recreation, fishing, aquatic life including propagation and survival, and wildlife; all freshwaters are classified to protect these uses at a minimum;
- (2) Class B; freshwaters protected for primary recreation which includes swimming on a frequent or organized basis and all Class C uses;
- (3) Class WS-I; waters protected as water supplies which are essentially in natural and undeveloped watersheds in public ownership; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint sources and stormwater discharges of pollution are required; suitable for all Class C uses;
- (4) Class WS-II; waters protected as water supplies which are generally in predominantly undeveloped watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint sources and stormwater discharges of pollution are required; suitable for all Class C uses;
- (5) Class WS-III; waters protected as water supplies which are generally in low to moderately developed watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint sources and stormwater discharges of pollution are required; suitable for all Class C uses;

- (6) Class WS-IV; waters protected as water supplies which are generally in moderately to highly developed watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint sources and stormwater discharges of pollution are required; suitable for all Class C uses;

- (7) Class WS-V; waters protected as water supplies which are generally upstream of and draining to ~~Class IV~~ Class WS-IV waters; or previously used for drinking water supply purposes or waters used by industry to supply their employees, but not municipalities or counties, with a raw drinking water supply source, although this type of use is not restricted to a WS-V classification. The Commission may consider a more protective classification for the water supply if a resolution requesting a more protective classification is submitted from all local governments having land use jurisdiction in the affected watershed; no categorical restrictions on watershed development or treated wastewater discharges are required; however, the Commission or its designee may apply appropriate management requirements as deemed necessary for the protection of downstream receiving waters (15A NCAC 2B .0203); suitable for all Class C uses.

(d) Tidal Salt Water Classifications.

- (1) Class SC; saltwaters protected for secondary recreation, fishing, aquatic life including propagation and survival, and wildlife; all saltwaters are classified to protect these uses at a minimum;
- (2) Class SB; saltwaters protected for primary recreation which includes swimming on a frequent or organized basis and all Class SC uses;
- (3) Class SA; suitable for commercial shellfishing and all other tidal saltwater uses.

(e) Supplemental Classifications.

- (1) Trout waters (Tr); freshwaters protected for natural trout propagation and survival of stocked trout;
- (2) Swamp waters (Sw); waters which have low velocities and other natural

- characteristics which are different from adjacent streams;
- (3) Nutrient Sensitive Waters (NSW); waters subject to growths of microscopic or macroscopic vegetation requiring limitations on nutrient inputs;
 - (4) Outstanding Resource Waters (ORW); unique and special waters of exceptional state or national recreational or ecological significance which require special protection to maintain existing uses;
 - (5) High Quality Waters (HQW); waters which are rated as excellent based on biological and physical/chemical characteristics through Division monitoring or special studies, native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission, primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas designated by the Wildlife Resources Commission, critical habitat areas designated by the Wildlife Resources Commission or the Department of Agriculture, all water supply watersheds which are either classified as WS-I or WS-II or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Environmental Management and all Class SA waters;
 - (6) Future Water Supply (FWS); waters that have been requested by a local government and adopted by the Commission as a future source for drinking, culinary, or food-processing purposes. Local government(s) requesting the Future Water Supply reclassification must have submitted to the Division of Water Resources a Water Supply Plan as described in G.S. 143-355(l). Local government(s) requesting this reclassification must also provide to the Division a copy of this plan along with other evidence of intent which may include capital improvement plans, land acquisition or bond issuance for water treatment plant, and a 1:24,000 scale USGS topographical map delineating the location of the intended water supply intake. Requirements for activities ad-

ministered by the State of North Carolina, such as the issuance of permits for landfills, NPDES wastewater discharges, land application of residuals and road construction activities will be effective upon reclassification for future water supply use. The requirements shall apply to the critical area and balance of the watershed or protected area as appropriate. Upon receipt of the final approval letter from the Division of Environmental Health for construction of the water treatment plant and water supply intake, the Commission will initiate rule-making to modify the Future Water Supply supplemental classification. Local government implementation is not required until 270 days after the Commission has modified the Future Water Supply (FWS) supplemental classification through the rule-making process and notified the affected local government(s) that the appropriate local government land use requirements applicable for the water supply classifications are to be adopted, implemented and submitted to the Commission for approval. Local governments may also adopt land use ordinances that meet or exceed the state's minimum requirements for water supply watershed protection prior to the end of the 270 day deadline. The requirements for FWS may also be applied to waters formerly used for drinking water supply use, and currently classified for water supply use, at the request of local government(s) desiring protection of the watershed for future water supply use.

(f) In determining the best usage of waters and assigning classifications of such waters, the Commission will consider the criteria specified in General Statute G.S. 143-214.1(d) and all existing uses as defined by 15A NCAC 2B .0202. In determining whether to revise a designated best usage for waters through a revision to the classifications, the Commission will follow the requirements of 40 CFR 131.10(b),(c),(d) and (g) which are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Water Quality Planning Branch, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be

obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars (\$13.00).

(g) When revising the classification of waters, the Division will collect water quality data within the watershed for those substances which require more stringent control than required by the existing classification. However, such sampling may be limited to only those parameters which are of concern. If the revision to classifications involves the removal of a designated use, the Division will conduct a use attainability study as required by the provisions of 40 CFR 131.10(j) which are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Water Quality Planning Branch, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars (\$13.00).

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

.0104 CONSIDERATIONS/ASSIGNING/IMPLEMENTING WATER SUPPLY CLASSIFICATIONS

(a) In determining the suitability of waters for use as a source of water supply for drinking, culinary or food processing purposes after approved treatment, the Commission will be guided by the physical, chemical, and bacteriological maximum contaminant levels specified by Environmental Protection Agency regulations adopted pursuant to the Public Health Service Act, 42 U.S.C. 201 et seq., as amended by the Safe Drinking Water Act, 42 U.S.C. 300(f) et seq. In addition, the Commission will be guided by the requirements for unfiltered and filtered water supplies and the maximum contaminant levels specified in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1100, .1200 and .1500 and comments provided by the Division of Environmental Health.

(b) All local governments that have land use authority within designated water supply watersheds will adopt and enforce ordinances that at a minimum meet the requirements of G.S. 143-214.5 and this Subchapter. The Commission shall approve local water supply protection programs if it determines that the requirements of the local

program equal or exceed the minimum statewide water supply watershed management requirements adopted pursuant to this Section. Local governments may adopt and enforce more stringent controls. Local management programs and modifications to these programs must be approved by the Commission and will be kept on file by the Division of Environmental Management, Division of Environmental Health and the Division of Community Assistance.

(c) All waters used for water supply purposes or intended for future water supply use shall be classified to the most appropriate water supply classification as determined by the Commission. Water supplies may be reclassified to a more or less protective water supply classification on a case-by-case basis through the rule-making process. A more protective water supply classification may be applied to existing water supply watersheds after receipt of a resolution from all local governments having land use jurisdiction within the designated water supply watershed requesting a more protective water supply classification. Local government(s) requesting the Future Water Supply reclassification must have submitted to the Division of Water Resources a Water Supply Plan as described in G.S. 143-355(l). Local government(s) requesting this reclassification must also provide to the Division a copy of this plan along with other evidence of intent which may include capital improvement plans, land acquisition or bond issuance for water treatment plant, and a 1:24,000 scale USGS topographical map delineating the location of the intended water supply intake. Requirements for activities administered by the State of North Carolina, such as the issuance of permits for landfills, NPDES wastewater discharges, land application of residuals and road construction activities will be effective upon reclassification for future water supply use. The requirements shall apply to the critical area and balance of the watershed or protected area as appropriate. Upon receipt of the final approval letter from the Division of Environmental Health for construction of the water treatment plant and water supply intake, the Commission will initiate rule-making to modify the Future Water Supply supplemental classification. Local government implementation is not required until 270 days after the Commission has modified the Future Water Supply (FWS) supplemental classification through the rule-making process and notified the affected local government(s) that the appropriate local government land use requirements applicable for the water supply classifications are to be adopted.

implemented and submitted to the Commission for approval. Local governments may also adopt and use ordinances that meet or exceed the state's minimum requirements for water supply watershed protection prior to the end of the 270 day deadline. The requirements for FWS may also be applied to waters formerly used for drinking water supply purposes, and currently classified for water supply use, at the request of local government(s) desiring protection of the watershed for future water supply use.

(d) In considering the reclassification of waters for water supply purposes, the Commission will take into consideration the relative proximity, quantity, composition, natural dilution and diminution of potential sources of pollution to determine that risks posed by all significant pollutants are adequately considered.

(e) For the purposes of implementing the water supply watershed protection rules (15A NCAC 2B .0100, .0200 and .0300) and the requirements of G.S. 143-214.5, the following schedule of implementation shall be applicable:

August 3, 1992 - Activities administered by the State of North Carolina, such as the issuance of permits for landfills, NPDES wastewater discharges, and land application of sludge/residuals, and road construction activities, shall become effective regardless of the deadlines for municipal and county water supply watershed protection ordinance adoptions;

By July 1, 1993 - Affected municipalities with a population greater than 5,000 shall adopt and submit the appropriate drinking water supply protection, ~~management plans~~, maps and ordinances that meet or exceed the minimum management requirements of these Rules;

By October 1, 1993 - Affected municipalities with a population less than 5,000 shall adopt and submit the appropriate drinking water supply protection, ~~management~~

~~plans~~, maps and ordinances that meet or exceed the minimum management requirements of these Rules;

By January 1, 1994 - Affected county governments shall adopt and submit the appropriate drinking water supply protection, ~~management plans~~, maps and ordinances that meet or exceed the minimum management requirements of these Rules.

Affected local government ~~management plans~~ and drinking water supply protection ordinances shall become effective on or before these dates. Local governments may choose to adopt, implement and enforce these provisions prior to this date. Three copies of the adopted and effective relevant ~~management plans~~ and ordinances shall be sent to the Division along with a cover letter from the municipal or county attorney, or its designated legal counsel, stating that the local government drinking water supply protection ~~management plans~~ and ordinances shall meet or exceed these Rules. Revisions to these Rules shall require the Division to modify and distribute to local governments, as appropriate, the model ordinance. The Division shall approve the amended local ~~management plans~~, maps and ordinances, or request the Commission to take appropriate action under G.S. 143-214.5.

(f) Wherever in this Subchapter it is provided that local governments assume responsibility for operation and maintenance of engineered stormwater control(s), this shall be construed to require responsible local governments to inspect such controls ~~at least once per year~~, to determine whether the controls are performing as designed and intended. Records of inspections shall be maintained on forms approved or supplied by the Division. Local governments may require payment of reasonable inspection fees by entities which own the controls, as authorized by law. In the event inspection shows that a control is not performing adequately, the local government shall order the owning entity to take corrective actions. If the entity fails to take sufficient corrective actions, the local government may impose civil penalties and pursue other available remedies in accordance with the law. The availability of new engineered stormwater controls as an alternative to lower development density and other measures

under the provisions of this Subchapter and local ordinances approved by the Commission shall be conditioned on the posting of adequate financial assurance, in the form of a cash deposit or bond made payable to the responsible local government, or other acceptable security. The establishment of a stormwater utility by the responsible local government shall be deemed adequate financial assurance. The purpose of the required financial assurance is to assure that maintenance, repairs or reconstruction necessary for adequate performance of the controls may be made by the owning entity or the local government which may choose to assume ownership and maintenance responsibility.

(g) Where higher density developments are allowed, stormwater control systems must use wet detention ponds as described in 15A NCAC 2H .1003(g)(2), (g)(3), (i), (j), (k) and (l). Alternative stormwater management systems consisting of other treatment options, or a combination of treatment options, may be approved on a case-by-case basis by the Director. The design criteria for approval will be 85 percent average annual removal of Total Suspended Solids and a post development peak discharge rate equal to the predevelopment peak discharge rate equal to the predevelopment peak discharge rate for the one year, 6-hour storm.

(h) Where no practicable alternative exists, discharge from groundwater remediation projects addressing water quality problems will be allowed in accordance with other applicable requirements in all water supply classifications.

(i) To further the cooperative nature of the water supply watershed management and protection program provided for herein, local governments with jurisdiction over portions of classified watersheds and local governments which derive their water supply from within such watersheds are encouraged to establish joint water quality monitoring and information sharing programs, by interlocal agreement or otherwise. Such cooperative programs shall be established in consultation with the Division.

(j) Where no practicable alternative exists other than surface water discharge, previously unknown existing unpermitted wastewater discharges will incorporate the best possible technology treatment as deemed appropriate by the Division.

(k) The Commission may designate water supply watersheds or portions thereof as critical water supply watersheds pursuant to G.S. 143-214.5(b).

(l) A more protective classification may be allowed by the Commission although minor occurrences of nonconforming activities are present

prior to reclassification. When the Commission allows a more protective classification, expansions of existing wastewater discharges that otherwise would have been prohibited may be allowed if there is no increase in permitted pollutant loading; other discharges of treated wastewater existing at the time of reclassification may be required to meet more stringent effluent limitations as determined by the Division. Consideration of all practicable alternatives to surface water discharge must be documented.

(m) The construction of new roads and bridges and non-residential development shall minimize built-upon area, divert stormwater away from surface water supply waters as much as possible, and employ best management practices (BMPs) to minimize water quality impacts. To the extent practicable, the construction of new roads in the critical area should be avoided. The Department of Transportation shall use BMPs as outlined in their document entitled "Best Management Practices for the Protection of Surface Waters" which is hereby incorporated by reference. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Water Quality Planning Branch, 512 North Salisbury Street, Raleigh, North Carolina.

(n) Activities within water supply watersheds are also governed by the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1100, .1200 and .1500. Proposed expansions of treated wastewater discharges to water supply waters must be approved by the Division of Environmental Health.

(o) Local governments are responsible for correctly delineating the approximate normal pool elevation for backwaters of water supply reservoirs for the purposes of determining the critical and protected area boundaries as appropriate. Local governments must submit to the Division ~~the boundaries of the critical and protected areas using 1:24,000 scale U.S.G.S. topographical maps a~~ 1:24,000 scale U.S.G.S. topographic map which shows the local government's corporate and extra-territorial jurisdiction boundaries, the Commission's adopted critical and protected area boundaries, as well as the local government's interpreted critical and protected area boundaries. All revisions (expansions or deletions) to these areas must be submitted to the Division and approved by the Commission prior to local government revision.

~~(p) During the 1992 statewide reclassification of water supply watershed classifications, the~~

~~Commission shall examine each water supply watershed where any new sanitary landfill for the disposal of nonhazardous solid waste is proposed to be located, and if there was pending on June 30, 1990 a petition for reclassification of such waters to a more protective water supply classification, to determine whether more restrictive standards should be established for the siting of such new sanitary landfills. The Commission, in the reclassification, may establish standards more restrictive than those in 15A NCAC 2B .0211 when required to protect the water supply from inappropriate additional sources of potential contamination due to proposed new sanitary landfills within the water supply watershed.~~

(p) ~~(q)~~ Local governments will encourage participation in the Agricultural Cost Share Program. The Soil and Water Conservation Commission is the designated management agency responsible for implementing the provisions of these Rules pertaining to agricultural activities. Agricultural activities are subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624 and 15A NCAC 2H .0217). The following shall be required within WS-I watersheds and the critical areas of WS-II, WS-III and WS-IV watersheds:

- (1) Agricultural activities conducted after January 1, 1993 shall maintain a minimum 10 foot vegetated buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; and
- ~~(2) Animal operations greater than 100 animal units shall employ Best Management Practices [as defined by Rule .0202(6) of this Subchapter] by July 1, 1994 recommended by the Soil and Water Conservation Commission.~~
- (2) Animal operation deemed permitted under 15A NCAC 2H .0217 are allowed in all classified water supply watersheds.

(q) ~~(r)~~ Existing development is not subject to the requirements of these Rules. Redevelopment is allowed if the rebuilding activity does not have a net increase in built-upon area or provides equal or greater stormwater control than the previous development, except that there are no restrictions on single family residential redevelopment.

Expansions to structures classified as existing development must meet the requirements of these Rules; however, the built-upon area of the existing development is not required to be included in the density calculations. Expansions to structures other than existing development must meet the density requirements of these Rules for the entire project site. ~~A deeded single family lot owned by an individual prior to the effective date of the water supply ordinance, regardless of whether a vested right has been established, is not subject to the development restrictions of these Rules; however, this exemption is not applicable to multiple lots under single ownership. Local governments may require the recombination of single owner nonconforming lots.~~ If a nonconforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of these Rules if it is developed for single-family residential purposes. Local governments may however, require the combination of contiguous nonconforming lots of record owned by the same party in order to establish a lot or lots that meet or nearly meet the development restrictions of these Rules. Any lot that, when divided, was exempt from or outside the scope of the subdivision regulations of any local government shall not be subject to the development restrictions of these Rules. Local governments may also apply more stringent controls relating to determining existing development, redevelopment or expansions. ~~Development activities may be granted minor exemptions by local governments utilizing the procedures of North Carolina General Statutes Article 18, Chapter 153A or Article 19, Chapter 160A. A description of each project receiving an exemption and the reason for granting the exemption shall be submitted to the Commission on an annual basis. In addition, upon request of a local government, the Commission may grant exemptions of a more significant nature in unique circumstances on a case-by-case basis when necessary to accommodate important social and economic development. For all proposed exemptions the local government considering or requesting the exemption shall notify and allow a reasonable comment period for all other local governments having jurisdiction within the watershed area governed by these Rules and the entity using the water supply for consumption.~~

(r) Development activities may be granted minor variances by local governments utilizing the procedures of G.S. 153A Article 18, or G.S. 160A, Article 19. A description of each project

receiving a variance and the reason for granting the variance shall be submitted to the Commission on an annual basis by January 1. For all proposed major and minor variances from the minimum statewide watershed protection rules, the local Watershed Review Board shall make findings of fact showing that:

- (1) there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance;
- (2) the variance is in harmony with the general purpose and intent of the local watershed protection ordinance and preserves its spirit; and
- (3) in granting the variance, the public safety and welfare have been assured and substantial justice has been done.

The local Watershed Review Board may attach conditions to the major or minor variance request that support the purpose of the local watershed protection ordinance. If the variance request qualifies as a major variance, and the local Watershed Review Board decides in favor of granting the major variance, the Board shall then prepare a preliminary record of the hearing and submit it to the Commission for review and approval. If the Commission approves the major variance or approves with conditions or stipulations added, then the Commission shall prepare a Commission decision which authorizes the local Watershed Review Board to issue a final decision which would include any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a Commission decision to be sent to the local Watershed Review Board. The local Watershed Review Board shall prepare a final decision denying the major variance. For all proposed major and minor variances the local government considering or requesting the variance shall notify and allow a reasonable comment period for all other local governments having jurisdiction within the watershed area governed by these Rules and the entity using the water supply for consumption. Appeals from the local government decision on a major or minor variance request are made on certiorari to the local Superior Court. Appeals from the Commission decision on a major variance request are made on judicial review to Wake County Superior Court. When local ordinances are more stringent than the state's minimum water supply protection rules a variance to the local government's ordinance is not considered a major variance as long as the result of the variance is not less stringent than the state's minimum require-

ments.

(s) Cluster development is allowed on a project-by-project basis as follows:

- (1) Overall density of the project meets associated density or stormwater control requirements;
- (2) Buffers meet the minimum statewide water supply watershed protection requirements;
- (3) Built-upon areas are designed and sited to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;
- (4) Areas of concentrated density development are located in upland areas and away, to the maximum extent practicable, from surface waters and drainage-ways;
- (5) Remainder of tract to remain in vegetated or natural state;
- (6) Where the development has an incorporated property owners association, the title of the open space shall be conveyed to the association for management. Where a property owners association is not incorporated, a maintenance agreement shall be filed with the property deeds; and
- (7) Cluster developments that meet the applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

(t) Local governments may administer oversight of future development activities in single family residential developments that exceed the applicable low density requirements by tracking dwelling units rather than percentage built-upon area, as long as the wet detention pond or other approved stormwater control system is sized to capture and treat runoff from all pervious and built-upon surfaces shown on the development plan and any off-site drainage from pervious and built-upon surfaces, and when an additional safety factor of 15 percent of built-upon area of the project site is figured in.

(u) Planned Unit Developments (PUDs) and mixed use developments that do not exceed the applicable low density requirements must meet the following criteria:

- (1) Buffers meet the minimum statewide water supply watershed protection

requirements;

- (2) Stormwater runoff shall be transported by vegetated conveyances to the maximum extent practicable; and
- (3) In reviewing and approving a development plan for a Planned Unit Development (PUD) or mixed use development, the local government shall have the option of determining built-upon area for the entire development or for each type of land use within the development. A local government may require additional stormwater controls, on a case-by-case basis, if it determines that areas of concentrated development are located such that stormwater flows and stormwater impacts to receiving waters are not minimized; that sheet flow through vegetated areas is not maximized; that the flow length through vegetated areas is not maximized; or that areas of concentrated development are not located in upland areas and away, to the maximum extent practicable, from surface waters and drainage-ways.

(v) Planned Unit Developments (PUDs) and mixed use developments that exceed the applicable low density requirements must meet the following criteria:

- (1) Buffers meet the minimum statewide water supply watershed protection requirements; and
- (2) Wet detention ponds or other alternative stormwater management systems which are designed for 85 percent average annual removal of Total Suspended Solids and a post development peak discharge rate equal to the pre-development peak discharge rate for the one year, 6-hour storm, as approved by the Director.

(w) All new development meets the development requirements on a project-by-project basis except local governments may submit ordinances and ordinance revisions for balance of watershed or protected areas which use density or built-upon area criteria averaged throughout the local government's watershed jurisdiction instead of on a project-by-project basis within the watershed. Prior to approval of the ordinance or amendment, the local government must demonstrate to the Commission that the provisions as averaged meet or exceed the statewide minimum requirements, and that a mechanism exists to ensure the orderly

and planned distribution of development potential throughout the watershed jurisdiction.

(x) ~~(s)~~ Silviculture activities are subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15A NCAC 11 .0101 - .0209). The Division of Forest Resources is the designated management agency responsible for implementing the provisions of these Rules pertaining to silviculture activities.

(y) ~~(t)~~ Local governments shall, as the existing laws allow, develop, implement, and enforce comprehensive nonpoint source and stormwater discharge control programs to reduce water pollution from activities within water supply watersheds such as development, forestry, landfills, mining, on-site sanitary sewage systems which utilize ground adsorption, toxic and hazardous materials, transportation, and water based recreation.

(z) ~~(u)~~ When the Commission assumes a local water supply protection program all local permits authorizing construction and development activities as regulated by the statewide minimum water supply watershed protection rules of this Subchapter must be approved by the Commission prior to local government issuance.

(aa) In the event that stormwater management systems or facilities may impact existing waters or wetlands of the United States, the Clean Water Act requires that these systems or facilities be consistent with all federal and state requirements.

(bb) ~~(v)~~ A model local water supply watershed management and protection ordinance, as approved by the Commission in accordance with G.S. 143-214.5, is on file with the Office of Administrative Hearings and may be obtained by writing to: Director Water Quality Planning Branch, Division of Environmental Management, Post Office Box 29535, Raleigh, North Carolina 27626-0535.

(cc) The Commission may delegate such matters as variance approval, extension of deadlines for submission and civil penalties to the Director.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS OF NORTH CAROLINA

.0202 DEFINITIONS

The definition of any word or phrase used in these rules shall be the same as given in Article 21, Chapter 143 of the General Statutes of North

Carolina. The following words and phrases, which are not defined in this article, will be interpreted as follows:

- (1) Acute toxicity to aquatic life means lethality or other harmful effects sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to a short-term exposure (relative to the life cycle of the organism) to a specific chemical or mixture of chemicals (as in an effluent). Short-term exposure for acute tests is generally 96 hours or less. Acute toxicity will be determined using the following procedures:
 - (a) for specific chemical constituents or compounds, acceptable levels will be equivalent to a concentration of one-half or less of the Final Acute Value (FAV) as determined according to "Guidelines for Deriving Numerical Water Quality Criteria for the Protection of Aquatic Life and its Uses" published by the Environmental Protection Agency and referenced in the Federal Register (50 FR 30784, July 29, 1985).
 - (b) for specific chemical constituents or compounds for which values described under Subparagraph (1)(a) of this Rule can not be determined, acceptable levels will be equivalent to a concentration of one-third or less of the lowest available LC50 value.
 - (c) for effluents, acceptable levels are defined as no statistically measurable lethality (99 percent confidence level using Students t test) during a specified exposure period. Concentrations of exposure will be determined on a case-by-case basis.
 - (d) in instances where detailed dose response data indicate that levels of acute toxicity are significantly different from those defined in this Rule, the Director may determine on a case-by-case basis an alternate acceptable level through statistical analyses of the dose response curve.
- (2) Acute to Chronic Ratio (ACR) means the ratio of acute toxicity expressed as an LC50 for a specific toxicant or an effluent to the chronic value for the same toxicant or effluent.

- (3) Agricultural uses include the use of waters for stock watering, irrigation, and other farm purposes.
- (4) Approved treatment, as applied to water supplies, means treatment accepted as satisfactory by the Division of Environmental Health or Division of Environmental Management.
- (5) Average (except bacterial) means arithmetical average and includes the analytical results of all samples taken during the specified period; all sampling shall be done as to obtain the most representative sample under prevailing conditions:
 - (a) Daily Average for dissolved oxygen, shall be of at least four samples;
 - (b) Weekly Average means the average of all daily composite samples obtained during the calendar week; if only one grab sample is taken each day, the weekly average is the average of all daily grab samples; a minimum of three daily grab samples is needed to calculate a weekly average;
 - (c) Monthly Average means the average of all daily composites (or grab samples if only one per day) obtained during the calendar month.

The definitions in this Paragraph do not affect the monitoring requirements for NPDES permits but rather are to be used by the Division along with other methodologies in determining violations of water quality standards. Arithmetical averages as defined by this Rule, and not confidence limits nor other statistical descriptions, will be used in all calculations of limitations which require the use of averages pursuant to this Rule and 40 CFR 122.41(l)(4)(iii).
- (6) Best Management Practice (BMP) means a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
- (7) Best usage of waters as specified for each class means those uses as determined by the Environmental Management Commission in accordance with the provisions of ~~Article 21, Chapter G.S.~~ 143-214.1, ~~General~~

~~Statutes of North Carolina.~~

- (8) Bioaccumulation factor (BAF) is a unitless value that describes the degree to which substances are taken up or accumulated into tissues of ~~aequatic~~ aquatic organisms from water directly and from food or other ingested materials containing the accumulated substances, and is usually measured as a ratio of a substance's concentration in tissue versus its concentration in water in situations where exposure to the substance is occurring from both water and the food chain.
- (9) Bioconcentration factor (BCF) is a unitless value that describes the degree to which substances are absorbed or concentrated into tissues of aquatic organisms from water directly and is usually measured as a ratio of substance's concentration in tissue versus its concentration in water in situations where exposure to the substance is occurring from water only.
- (10) Biological integrity means the ability of an aquatic ecosystem to support and maintain a balanced and indigenous community of organisms having species composition, diversity, population densities and functional organization similar to that of reference conditions.
- (11) Buffer means a natural or vegetated area through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.
- (12) Built-upon area means that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, ~~gravel roads, gravel areas~~ (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)
- (13) Chronic toxicity to aquatic life means any harmful effect sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to long-term exposure (relative to the life cycle of the organism) or exposure during a substantial portion of the duration of a sensitive period of the life cycle to a specific chemical substance or mixture of chemicals (as in an effluent). In absence of extended periods of exposure, early life stage or reproductive toxicity tests may be used to define chronic impacts.
- (14) Chronic value for aquatic life means the geometric mean of two concentrations identified in a controlled toxicity test as the No Observable Effect Concentration (NOEC) and the Lowest Observable Effect Concentration (LOEC).
- (15) Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential subdivisions and multi-family developments.
- (16) ~~(15)~~ Concentrations are the mass of a substance per volume of water and for the purposes of this Section will be expressed as milligrams per liter (mg/l), micrograms per liter (ug/l), or nanograms per liter (ng/l).
- (17) ~~(16)~~ Critical area means the area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either 1/2 mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or 1/2 mile upstream from and draining to the intake (or other appropriate downstream location associated with the water supply) located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first). Since WS-I watersheds are essentially undeveloped, establishment of a critical area is not required. Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate

the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of 1/2 mile. The Commission may adopt a different critical area size during the reclassification process.

(18) ~~(17)~~ Critical habitat areas are defined for the purposes of the rules of this Section as those waters which are considered to be essential for the continued existence of an endangered or threatened species, and which are so designated by the NC Wildlife Resources Commission for animals or the NC Department of Agriculture for plants.

(19) ~~(18)~~ Designated Nonpoint Source Agency means those agencies specified by the Governor in the North Carolina Nonpoint Source Management Program, as approved by the Environmental Protection Agency.

(20) ~~(19)~~ Development means any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

(21) Director means the Director of the Division of Environmental Management.

(22) ~~(20)~~ Discharge is the addition of any man-induced waste effluent either directly or indirectly to state surface waters.

(23) ~~(21)~~ Division means the Division of Environmental Management or its successors.

(24) ~~(22)~~ Domestic wastewater discharge means the discharge of sewage, non-process industrial wastewater, other domestic wastewater or any combination of these items. Unless excepted by the Director, domestic wastewater includes liquid waste generated by domestic water using fixtures and appliances, from any residence, place of business, or place of public assembly even if it contains no sewage. Examples of domestic wastewater include once-through non-contact cooling water, seafood packing facility discharges and wastewater from restaurants.

(25) ~~(23)~~ Effluent channel means a discernable confined and discrete

conveyance which is used for transporting treated wastewater to a receiving stream or other body of water as provided in Rule .0215 of this Section.

(26) ~~(24)~~ Existing development, for the purposes of these Rules, shall be defined as those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of the local government water supply ordinance, or such earlier time that an affected local government's ~~management plans~~ and ordinances shall specify, based on at least one of the following criteria:

- (a) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- (b) having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1, or
- (c) ~~having expended substantial resources (time, labor, money)~~ and having an approved site specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.

(27) ~~(25)~~ Existing uses mean uses actually attained in the water body, in a significant and not incidental manner, on or after November 28, 1975, whether or not they are included in the water quality standards, which either have been actually available to the public or are uses deemed attainable by the Environmental Management Commission. At a minimum, uses shall be deemed attainable if they can be achieved by the imposition of effluent limits and cost-effective and reasonable best management practices (BMPs) for nonpoint source control.

(28) ~~(26)~~ Fishing means the taking of fish by sport or commercial methods as well as the consumption of fish or shellfish or the propagation of fish and such other aquatic life as is necessary to provide a suitable environment for fish.

(29) ~~(27)~~ Freshwater means all waters that under natural conditions would have a chloride ion content of 500 mg/l or

less.

(28) ~~Hazardous material means any substance listed as such in: Superfund Amendments and Reauthorization Act (SARA) Section 302 Extremely Hazardous Substances (42 USC 11000 et seq.); Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Hazardous Substances (42 USC 9601 et seq.) or Section 311 of the Clean Water Act (CWA), as amended (33 USC 1251 et seq.; oil and hazardous substances) hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina. Copies of SARA and CERCLA may be obtained as a single package from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 at a cost of one hundred and one dollars (\$101.00). Copies of CWA may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 at a cost of fifty dollars (\$50.00).~~

(30) (29) Industrial discharge means the discharge of industrial process treated wastewater or wastewater other than sewage and includes:

- (a) wastewater resulting from any process of industry or manufacture, or from the development of any natural resource;
- (b) wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants;
- (c) stormwater will not be considered to be an industrial wastewater unless it is contaminated with industrial wastewater; or
- (d) wastewater discharged from a municipal wastewater treatment plant requiring a pretreatment program.

(31) (30) LC50 means that concentration of a toxic substance which is lethal (or immobilizing, if appropriate) to 50

percent of the organisms tested during a specified exposure period. The LC50 concentration for toxic materials shall be determined for sensitive species as defined by Subparagraph (43) of this Rule under aquatic conditions characteristic of the receiving waters.

(32) (31) Local government means a city or county in singular or plural as defined in G.S. 160A-1(2) and G.S. 158A-10.

(33) (32) Lower piedmont and coastal plain waters mean those waters of the Catawba River Basin below Lookout Shoals Dam; the Yadkin River Basin below the junction of the Forsyth, Yadkin, and Davie County lines; and all of the waters of Cape Fear, Lumber, Roanoke, Neuse, Tar-Pamlico, Chowan, Pasquotank, and White Oak River Basins; except tidal salt waters which are assigned S classifications.

(34) (33) MF is an abbreviation for the membrane filter procedure for bacteriological analysis.

(35) Major variance means a variance from the minimum statewide watershed protection rules that results in the relaxation, by a factor greater than five percent of any buffer, density or built-upon area requirement under the high density option; any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or relaxation by a factor greater than 10 percent, of any management requirement under the low density option.

(36) Minor variance means a variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five percent of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation by a factor up to 10 percent, of any management requirement under the low density option.

(37) (34) Mixing zone means a region of the receiving water in the vicinity of a discharge within which dispersion and dilution of constituents in the discharge occurs and such zones shall be subject to conditions established in accordance with 15A NCAC 2B .0204(b).

- (38) ~~(35)~~ Mountain and upper piedmont waters mean all of the waters of the Hiwassee; Little Tennessee, including the Savannah River drainage area; French Broad; Broad; New; and Watauga River Basins; and those portions of the Catawba River Basin above Lookout Shoals Dam and the Yadkin River Basin above the junction of the Forsyth, Yadkin, and Davie County lines.
- (39) Nonconforming lot of record means a lot described by a plat or a deed that was recorded prior to the effective date of local watershed regulations (or their amendments) that does not meet the minimum lot-size or other development requirements of these Rules.
- (40) ~~(36)~~ Nonpoint source pollution means pollution which enters waters mainly as a result of precipitation and subsequent runoff from lands which have been disturbed by man's activities and includes all sources of water pollution which are not required to have a permit in accordance with G.S. 143-215.1(c).
- (41) ~~(37)~~ Non-process discharge means industrial effluent not directly resulting from the manufacturing process. An example would be non-contact cooling water from a compressor.
- (42) ~~(38)~~ Nutrient sensitive waters mean those waters which are so designated in the classification schedule in order to limit the discharge of nutrients (usually nitrogen and phosphorus). They are designated by "NSW" following the water classification.
- (43) ~~(39)~~ Offensive condition means any condition or conditions resulting from the presence of sewage, industrial wastes or other wastes within the waters of the state or along the shorelines thereof which shall either directly or indirectly cause foul or noxious odors, unsightly conditions, or breeding of abnormally large quantities of mosquitoes or other insect pests, or shall damage private or public water supplies or other structures, result in the development of gases which destroy or damage surrounding property, herbage or grasses, or which may cause the impairment of taste, such as from fish flesh tainting, or affect the health

- of any person residing or working in the area.
- (44) ~~(40)~~ Primary Nursery Areas (PNAs) are tidal saltwaters which provide essential habitat for the early development of commercially important fish and shellfish and are so designated by the Marine Fisheries Commission.
- (45) ~~(41)~~ Primary recreation includes swimming, skin diving, skiing, and similar uses involving human body contact with water where such activities take place in an organized or on a frequent basis.
- (46) ~~(42)~~ Protected area means the area adjoining and upstream of the critical area in a WS-IV water supply in which protection measures are required. The boundaries of the protected areas are defined as ~~extending five miles upstream within five miles of the normal pool elevation of the reservoir~~ and draining to water supply reservoirs (measured from the normal pool elevation) or to the ridge line of the watershed (whichever comes first); or 10 miles upstream and draining to the intake located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first). Local governments may extend the protected area. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the protected area if these landmarks are immediately adjacent to the appropriate outer boundary of five or 10 miles. In some cases the protected area will encompass the entire watershed. The Commission may adopt a different protected area size during the reclassification process.
- (47) ~~(43)~~ Residential development means buildings for residence such as attached and detached single family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc.
- (48) ~~(44)~~ Secondary recreation includes wading, boating, other uses not involving human body contact with water, and activities involving human body contact with water where such activities take place on an infrequent,

(49) unorganized, or incidental basis.
(45) Sensitive species for aquatic toxicity testing is any species utilized in procedures accepted by the Commission or its designee in accordance with Rule .0103 of this Subchapter, or the following genera:

- (a) Daphnia;
- (b) Ceriodaphnia;
- (c) Salmo;
- (d) Pimephales;
- (e) Mysidopsis;
- (f) Champia;
- (g) Cyprinodon;
- (h) Arbacia;
- (i) Penaeus;
- (j) Menidia;
- (k) Notropis;
- (l) Salvelinus;
- (m) Oncorhynchus;
- (n) Selenastrum.

Other genera may be accepted by the Commission or its designee on a case-by-case basis.

(50) (46) Shellfish culture includes the use of waters for the propagation, storage and gathering of oysters, clams, and other shellfish for market purposes.

(51) (47) ~~Sludge/residuals~~ Residuals means any solid or semisolid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.

(52) Stormwater collection system means any conduit, pipe, channel, curb or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring or alternative methods where natural topography prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of 15A NCAC 2H .1003(c)(1).

(53) (48) Source of water supply for drinking, culinary or food-processing purposes means any source, either public or private, the waters from which are used for human consumption,

or used in connection with the processing of milk, beverages, food, or other purpose which requires water suitable for human consumption.

(54) (49) Swamp waters mean those waters which are classified by the Environmental Management Commission and which are topographically located so as to generally have very low velocities and certain other characteristics which are different from adjacent streams draining steeper topography. They are designated by "Sw" following the water classification.

(55) (50) Tidal salt waters mean all tidal waters which are classified by the Environmental Management Commission which generally have a natural chloride ion content in excess of 500 parts per million and include all waters assigned S classifications.

(56) (51) Toxic substance or toxicant means any substance or combination of substances (including disease-causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring.

(57) (52) Trout waters are those waters which have conditions which will sustain and allow for trout propagation and survival of stocked trout on a year-round basis. These waters are classified by the Commission after considering the requirements of Rule .0101(b) and (c) of this Subchapter and include all waters designated by "Tr" in the water classification.

(58) (53) Waste disposal includes the use of waters for disposal of sewage, industrial waste or other waste after approved treatment.

(59) (54) Water dependent structures are those structures for which the use requires access or proximity to or siting within surface waters to fulfill its basic

purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

(60) ~~(55)~~ Water quality based effluent limits and best management practices are limitations or best management practices developed by the Division for the purpose of protecting water quality standards and best usage of surface waters consistent with the requirements of ~~General Statute~~ G.S. 143-214.1 and the Federal Water Pollution Control Act as amended.

(61) ~~(56)~~ Waters with quality higher than the standards means all waters for which the determination of waste load allocations (pursuant to Rule .0206 of this Section) indicates that water quality is sufficiently greater than that defined by the standards such that significant pollutant loading capacity still exists in those waters.

(62) ~~(57)~~ Watershed means the entire land area contributing surface drainage to a specific point. For the purposes of the water supply protection rules (15A NCAC 2B .0211) local governments may use major landmarks such as highways or property lines to delineate the outer boundary of the drainage area if these landmarks are immediately adjacent to the ridgeline.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

.0211 FRESH SURFACE WATER CLASSIFICATIONS AND STANDARDS

(a) General. The water quality standards for all fresh surface waters are the basic standards applicable to Class C waters. Additional and more stringent standards applicable to other specific freshwater classifications are specified in Paragraphs (c) through (f) of this Rule.

(b) All fresh surface waters (Class C).

(1) Best Usage of Waters. Aquatic life propagation and maintenance of biological integrity (including fishing, and fish), wildlife, secondary recreation, agriculture and any other usage except for primary recreation or

as a source of water supply for drinking, culinary or food processing purposes;

(2) Conditions Related to Best Usage. The waters will be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;

(3) Quality standards applicable to all fresh surface waters:

- (A) Chlorophyll a (corrected): not greater than 40 ug/l for lakes, reservoirs, and other slow-moving waters not designated as trout waters, and not greater than 15 ug/l for lakes, reservoirs, and other slow-moving waters designated as trout waters (not applicable to lakes and reservoirs less than ~~ten~~ 10 acres in surface area); the Commission or its designee may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;
- (B) Dissolved oxygen: not less than 6.0 mg/l for trout waters; for non-trout waters, not less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l; swamp waters, lake coves or backwaters, and lake bottom waters may have lower values if caused by natural conditions;
- (C) Floating solids; settleable solids; sludge deposits: only such amounts attributable to sewage, industrial wastes or other wastes as will not make the water unsafe or unsuitable for aquatic life and wildlife or impair the waters for any designated uses;
- (D) Gases, total dissolved: not greater than 110 percent of saturation;
- (E) Organisms of the coliform group: fecal coliforms not to exceed a

- geometric mean of 200/100ml (MF count) based upon at least five consecutive samples examined during any 30 day period; nor exceed 400/100ml in more than 20 percent of the samples examined during such period; violations of the fecal coliform standard are expected during rainfall events and, in some cases, this violation is expected to be caused by uncontrollable nonpoint source pollution; all coliform concentrations are to be analyzed using the membrane filter technique unless high turbidity or other adverse conditions necessitate the tube dilution method; in case of controversy over results, the MPN 5-tube dilution technique will be used as the reference method;
- (F) Oils; deleterious substances; colored or other wastes: only such amounts as will not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses; for the purpose of implementing this Rule, oils, deleterious substances, colored or other wastes will include but not be limited to substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.4(a)-(b) which are hereby incorporated by reference including any subsequent amendments and additions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 at a cost of thirteen dollars (\$13.00).
- (G) pH: shall be normal for the waters in the area, which generally shall range between 6.0 and 9.0 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;
- (H) Phenolic compounds: only such levels as will not result in fish-flesh tainting or impairment of other best usage;
- (I) Radioactive substances:
- (i) Combined radium-226 and radium-228: the maximum average annual activity level (based on at least four samples collected quarterly) for combined radium-226 and radium-228 shall not exceed five picoCuries per liter;
 - (ii) Alpha Emitters: the average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;
 - (iii) Beta Emitters: the maximum average annual activity level (based on at least four samples, collected quarterly) for strontium-90 shall not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radio-nuclides) exceed 50 picoCuries per liter; nor shall the maximum average annual activity level for tritium exceed 20,000 picoCuries per liter;
- (J) Temperature: not to exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and in no case to exceed 29 degrees C (84.2 degrees F) for mountain and upper piedmont waters and 32 degrees C (89.6 degrees F) for lower piedmont and coastal plain waters. The temperature for trout waters shall not be increased by more than 0.5 degrees C (0.9 degrees F) due to the discharge of heated liquids, but in no case to exceed 20 degrees C (68 degrees F);
- (K) Turbidity: the turbidity in the receiving water will not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity will not exceed 25 NTU; if

turbidity exceeds these levels due to natural background conditions, the existing turbidity level cannot be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202(6) of this Section] recommended by the Designated Nonpoint Source Agency [as defined by Rule .0202 of this Section]. BMPs must be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such BMPs;

(L) Toxic substances: numerical water quality standards (maximum permissible levels) to protect aquatic life applicable to all fresh surface waters:

- (i) Arsenic: 50 ug/l;
- (ii) Beryllium: 6.5 ug/l;
- (iii) Cadmium: 0.4 ug/l for trout waters and 2.0 ug/l for non-trout waters;
- (iv) Chlorine, total residual: 17 ug/l for trout waters (Tr); (Action Level of 17 ug/l for all waters not classified as trout waters (Tr); see Paragraph (b)(4) of this Rule);
- (v) Chromium, total recoverable: 50 ug/l;
- (vi) Cyanide: 5.0 ug/l;
- (vii) Fluorides: 1.8 mg/l;
- (viii) Lead, total recoverable: 25 ug/l; collection of data on sources, transport and fate of lead will be required as part of the toxicity reduction evaluation for dischargers that are out of compliance with whole effluent toxicity testing requirements and the concentration of lead in the effluent is concomitantly determined to exceed an instream level of 3.1 ug/l from the discharge;
- (ix) MBAS (Methylene-Blue Active Substances): 0.5 mg/l;
- (x) Mercury: 0.012 ug/l;
- (xi) Nickel: 88 ug/l;
- (xii) Pesticides:
 - (I) Aldrin: 0.002 ug/l;
 - (II) Chlordane: 0.004 ug/l;

- (III) DDT: 0.001 ug/l;
- (IV) Demeton: 0.1 ug/l;
- (V) Dieldrin: 0.002 ug/l;
- (VI) Endosulfan: 0.05 ug/l;
- (VII) Endrin: 0.002 ug/l;
- (VIII) Guthion: 0.01 ug/l;
- (IX) Heptachlor: 0.004 ug/l;
- (X) Lindane: 0.01 ug/l;
- (XI) Methoxychlor: 0.03 ug/l;
- (XII) Mirex: 0.001 ug/l;
- (XIII) Parathion: 0.013 ug/l;
- (XIV) Toxaphene: 0.0002 ug/l;
- (xiii) Polychlorinated biphenyls: 0.001 ug/l;
- (xiv) Selenium: 5 ug/l;
- (xv) Toluene: 11 ug/l or 0.36 ug/l in trout waters;
- (xvi) Trialkyltin compounds: 0.008 ug/l expressed as tributyltin.

(4) Action Levels for Toxic Substances: if the Action Levels for any of the substances listed in this Subparagraph (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics or associated waste characteristics) are determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified low flow criterion for toxic substances (Rule .0206 in this Section), the discharger will be required to monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which Action Levels are listed in this Subparagraph will be limited as appropriate in the NPDES permit based on the Action Levels listed in this Subparagraph if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the Action Level parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances may be a significant causative factor resulting in toxicity of the effluent;

- (A) Copper: 7 ug/l;
- (B) Iron: 1.0 mg/l;
- (C) Silver: 0.06 ug/l;

- (D) Zinc: 50 ug/l;
- (E) Chloride: 230 mg/l;
- (F) Chlorine, total residual: 17 ug/l in all waters except trout waters (Tr); [a standard of 17 ug/l exists for waters classified as trout waters and is applicable as such to all dischargers to trout waters; see Subparagraph (b)(3)(L)(iv) of this Rule];

For purposes other than consideration of NPDES permitting of point source discharges as described in this Subparagraph, the Action Levels in this Rule, as measured by an appropriate analytical technique, will be considered as numerical ambient water quality standards.

(c) Class WS-I Waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection of their water supplies, waters located on land in public ownership, and any best usage specified for Class C waters;
- (2) Conditions Related to the Best Usage. Waters of this class are protected water supplies within essentially natural and undeveloped watersheds with no permitted point source dischargers except those specified in Rule .0104 of this Subchapter; waters within this class must be relatively unimpacted by nonpoint sources of pollution; land use management programs are required to protect waters from nonpoint source pollution; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard. The Class WS-I classification may be used to protect portions of Class WS-II, WS-III and WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested

by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

(3) Quality Standards Applicable to Class WS-I Waters:

- (A) Nonpoint Source Pollution: none that would adversely impact the waters for use as a water supply or any other designated use;
- (B) Organisms of coliform group: total coliforms not to exceed 50/100 ml (MF count) as a monthly geometric mean value in watersheds serving as unfiltered water supplies;
- (C) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
- (D) Sewage, industrial wastes: none except those specified in Subparagraph (2) of this Paragraph; or Rule .0104 of this Subchapter;
- (E) Solids, total dissolved: not greater than 500 mg/l;
- (F) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (G) Toxic and other deleterious substances:
 - (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-I waters:
 - (I) Barium: 1.0 mg/l;
 - (II) Chloride: 250 mg/l;
 - (III) Manganese: 200 ug/l;
 - (IV) Nickel: 25 ug/l;
 - (V) Nitrate nitrogen: 10.0 mg/l;
 - (VI) 2,4-D: 100 ug/l;
 - (VII) 2,4,5-TP (Silvex): 10 ug/l;
 - (VIII) Sulfates: 250 mg/l;
 - (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for

carcinogens in Class WS-I waters:

- (I) Beryllium: 6.8 ng/l;
- (II) Benzene: 1.19 ug/l;
- (III) Carbon tetrachloride: 0.254 ug/l;
- (IV) Chlorinated benzenes: 488 ug/l;
- (V) Dioxin: 0.000013 ng/l;
- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l.

(d) Class WS-II Waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection for their water supplies where a WS-I classification is not feasible and any best usage specified for Class C waters.
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in predominantly undeveloped watersheds; discharges which qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events and other stormwater discharges are allowed in the entire watershed; new domestic and industrial discharges of treated wastewater are not allowed in the entire watershed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on

either a short-term or long-term basis will be considered to be violating a water quality standard. The Class WS-II classification may be used to protect portions of Class WS-III and WS-IV water supplies. For reclassifications of these portions of Class WS-III and WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

(3) Quality Standards Applicable to Class WS-II Waters:

- (A) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in either Subparagraph (2) of this Paragraph and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharger may be required upon request by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water quality; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
- (B) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as a water supply or any other designated use;
 - (i) Nonpoint Source and Stormwater Pollution Control Criteria For

Entire Watershed:

- (I) Low Density Option: Development density must be limited to either no more than one dwelling unit per acre of single family detached residential development or one duplex (or 40,000 square foot lot excluding road frontage) or 12 percent built-upon area for all other residential and non-residential development in the watershed outside of the critical area; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (II) High Density Option: If new development exceeds ~~either one dwelling unit per acre or 12 percent built-upon area~~, the low density option requirements as stated in Subparagraph (d)(B)(i)(I) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of rainfall; new ~~residential and non-residential~~ development not to exceed 30 percent built-upon area;
- (III) Land within the watershed will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification ~~meets~~ does not exceed the density requirement when densities are averaged throughout the entire watershed area at the time of classification; ~~All new development meets this density requirement on a project-by-project basis;~~
- (IV) Clustering of Cluster development is allowed on a project-by-project basis as follows:
 - (1) Overall density of the project meets associated density or stormwater control requirements;
 - (2) Buffers meet the minimum statewide water supply watershed protection requirements;
 - (3) Built-upon areas ~~shall be~~ are designed and sited to minimize stormwater runoff impact to the receiving waters, ~~and~~ minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;
 - (4) Areas of concentrated development are located in upland areas and away to the maximum extent practicable, from surface waters and drainageways;
 - (5) Remainder of tract to remain in vegetated or natural state;
 - (6) Where the development has an incorporated property owners association, the title of the open space shall be conveyed to the association for management. Where a property owners association is not incorporated, a maintenance agreement shall be filed with the property deeds; and
 - (7) Cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;
- (V) A maximum of ~~five~~ 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new ~~non-residential~~ development projects and expansions of existing development of up to 70 percent built-upon surface area in addition to the new ~~non-residential~~ development approved in compliance with

the appropriate requirements of Subparagraphs (d)(3)(B)(i)(I) or (d)(3)(B)(i)(II) of this Paragraph. For expansions to existing development, the existing built-upon surface area is not counted toward the allowed 70 percent built-upon surface area. The Commission may allow 70 percent built-upon area on greater than five percent but not to exceed 10 percent of each jurisdiction's portion of the designated watershed outside of the critical area for new non-residential development. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10 percent/70 percent land area to another local government within the watershed upon submittal of a joint resolution and approval by the Commission. When the water supply watershed is composed of public lands, such as National Forest land, local governments may count the public land acreage within the watershed outside of the critical area in calculating the acreage allowed under this provision. For local governments that do not choose to use the high density option in that WS-II watershed, each Each project must, to the maximum extent practicable minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts; if the local government ~~opts for~~ selects the high density development option within that WS-II watershed, then appropriate engineered stormwater controls (~~wet detention basins~~) must be employed for the new

~~non-residential development which exceeds the low density requirements;~~

(VI) If local governments choose the high density development option which requires stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;

(VII) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option requirements as specified in Subparagraphs (d)(3)(B)(i)(I) or (d)(3)(B)(ii)(II) of this Paragraph; otherwise a minimum 30 foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank or shoreline stabilization;

(VIII) No new development is allowed in the buffer; water dependent structures, or other structures such as flag poles, signs and security lights, which result in only diminimus increased in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of BMPs;

~~(IX) Maintain inventory of all hazardous materials used and stored in the watershed; spill/failure containment plan and appropriate safeguards against contamination are~~

- required; waste minimization and appropriate recycling of materials is encouraged;
- (IX) ~~(X)~~ No new discharging landfills are allowed. No NPDES permits will be issued for landfills that discharge treated leachate;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (I) ~~(I)~~ New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials [as defined by 15A NCAC 2B .0202] are either used, stored or manufactured on the premises;
- (I) ~~(H)~~ Low Density Option: New development is limited to either no more than one dwelling unit of single family detached residential development or one duplex per two acres (or 80,000 square foot lot excluding road frontage) or six percent built-upon area for all other residential and non-residential development; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (II) ~~(H)~~ High Density Option: If new development density exceeds either one dwelling unit per two acres or six percent built-upon area the low density requirements specified in Subparagraph (d)(3)(B)(ii)(I), then engineered stormwater controls must be used to control runoff from the first inch of rainfall; new residential and non-residential development density not to exceed 24 percent built-upon area;
- (III) ~~(V)~~ No new permitted sites for land application of ~~sludge~~ residuals or petroleum contaminated soils are allowed;
- (IV) ~~(V)~~ No new landfills are allowed;
- (C) Odor producing substances contained in sewage or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause: taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (D) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
- (E) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (F) Total dissolved solids: not greater than 500 mg/l;
- (G) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-II waters:
- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 200 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10 mg/l;
- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP: 10 ug/l;
- (VIII) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-II waters:
- (I) Beryllium: 6.8 ng/l;
- (II) Benzene: 1.19 ug/l;
- (III) Carbon tetrachloride: 0.254 ug/l;
- (IV) Chlorinated benzenes: 488 ug/l;
- (V) Dioxin: 0.000013 ng/l;
- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic

- hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l.

(e) Class WS-III Waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I or WS-II classification is not feasible and any other best usage specified for Class C waters;
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in low to moderately developed watersheds; discharges that qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events, and other stormwater discharges are allowed in the entire watershed; treated domestic wastewater discharges are allowed in the entire watershed but no new domestic wastewater discharges are allowed in the critical area; no new industrial wastewater discharges except non-process industrial discharges are allowed in the entire watershed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard; the Class WS-III classification may be used to protect portions of Class WS-IV water supplies. For reclassifications of these

portions of WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

(3) Quality Standards Applicable to Class WS-III Waters:

- (A) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in Subparagraph (2) of this Paragraph and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharger may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water quality; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
- (B) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;
- (i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed:
 - (I) Low Density Option: Development density must be limited to either no more than two dwelling units of single family detached residential development of two duplexes

- per acre (or 20,000 square foot lot excluding road frontage) or 24 percent built-upon on area for all other residential and non-residential development in watershed outside of the critical area; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (II) High Density Option: If new development density exceeds two dwelling units per acre or 24 percent built-upon area the low density option requirements as specified in Subparagraph (e)(3)(B)(i)(I) of this Rule then development must control runoff from the first inch of rainfall; new residential and non-residential development not to exceed 50 percent built-upon area;
- (III) Land within the watershed will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification ~~meets~~ does not exceed the density requirement when densities are averaged throughout the entire watershed area; ~~All new development meets these density requirements on a project-by-project basis;~~
- (IV) ~~Clustering of~~ Cluster development is allowed on a project-by-project basis as follows:
- (1) Overall density of the project meets associated density or stormwater control requirements;
 - (2) Buffers meet the minimum statewide water supply watershed protection requirements;
 - (3) Built-upon areas ~~shall be~~ are designed and sited to minimize stormwater runoff impact to the receiving waters, and minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas; and maximize the flow length through vegetated areas;
 - (4) Areas of concentrated development are located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;
 - (5) Remainder of tract to remain in vegetated or natural state;
 - (6) Where the development has an incorporated property owners association, the title of the open space shall be conveyed to the association for management. Where a property owners association is not incorporated, a maintenance agreement shall be filed with the property deeds and;
 - (7) Cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;
- (V) A maximum of ~~five~~ 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new ~~non-residential~~ development projects and expansions of existing development of up to 70 percent built-upon surface area in addition to the new non-residential development approved in compliance with the appropriate requirements of Subparagraphs (e)(3)(B)(i)(I) or (e)(3)(B)(i)(II) of this Paragraph. For expansions to existing development, the existing built-upon surface area is not counted towards the

~~maximum allowed 70 percent built-upon surface area. The Commission may allow 70 percent built-upon area on greater than five percent but not to exceed 10 percent of each jurisdiction's portion of the designated watershed outside of the critical area for new non-residential development. A local government having land use jurisdiction within the watershed may transfer, in whole or in part, its right to the 10 percent/70 percent land area to another local government within the watershed upon submittal of a joint resolution and approval by the Commission. When the water supply watershed is composed of public lands, such as National Forest, local governments may count the public land acreage within the watershed outside of the critical area in figuring the acreage allowed under this provision. For local governments that do not use the high density option, each~~ Each project must to the maximum extent practicable minimize built-upon surface area, direct stormwater runoff away from surface waters, and incorporate best management practices to minimize water quality impacts; if the local government opts for high density development within the WS-III watershed, then ~~appropriate~~ engineered stormwater controls (wet detention basins) must be employed for the new ~~non-residential~~ development which exceeds the low density requirements;

(VI) If local governments choose the high density development option which requires engineered stormwater controls, then they will assume

ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;

(VII) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density requirements as specified in Subparagraphs (e)(3)(B)(i)(I) or (e)(3)(B)(ii)(II) of this Paragraph, otherwise a minimum 30 foot vegetative buffer for development is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank or shoreline stabilization;

(VIII) No new development is allowed in the buffer; water dependent structures, or other structures such as flagpoles, signs and security lights, which result on only diminimus increases impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;

~~(IX) Maintain inventory of all hazardous materials used and stored in the watershed; spill/failure containment plan and appropriate safeguards against contamination are required; waste minimization and appropriate recycling of materials is encouraged;~~

(IX) ~~No new discharging landfills are allowed No NPDES permits will be issued~~

- for landfills that discharge treated leachate;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (I) ~~New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises;~~
- (II) (H) Low Density Option: New development limited to either no more than one dwelling unit of single family detached residential development or one duplex per acre (or 40,000 square foot lot excluding road frontage) or 12 percent built-upon area; for all other residential and non-residential development; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (III) (H) High Density Option: If new development exceeds either one dwelling unit per acre or 12 percent built-upon area the low density requirements specified in Subparagraph (e)(3)(B)(ii)(I) of this Rule then engineered stormwater controls must be used to control runoff from the first inch of rainfall; residential and non-residential development not to exceed 30 percent built-upon area;
- (IV) ~~(V) No new permitted sites for land application of sludge/residuals or petroleum contaminated soils are allowed;~~
- (V) ~~No new landfills are allowed;~~
- (C) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (D) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
- (E) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (F) Total dissolved solids: not greater than 500 mg/l;
- (G) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-III waters:
- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 200 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10 mg/l;
- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP (Silvex): 10 ug/l;
- (VIII) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-III waters:
- (I) Beryllium: 6.8 ng/l;
- (II) Benzene: 1.19 ug/l;
- (III) Carbon tetrachloride: 0.254 ug/l;
- (IV) Chlorinated benzenes: 488 ug/l;
- (V) Dioxin: 0.000013 ng/l;
- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;

- (XV) Dieldrin: 0.135 ng/l;
(XVI) Heptachlor: 0.208 ng/l.

(f) Class WS-IV Waters.

- (1) Best Usage of Waters. Source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters;
- (2) Conditions Related to Best Usage. Waters of this class are protected as water supplies which are generally in moderately to highly developed watersheds or protected areas; discharges which qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events, other stormwater discharges and domestic wastewater discharges are allowed in the protected and critical areas; treated industrial wastewater discharges are allowed in the protected and critical areas; however, new industrial wastewater discharges in the critical area are required to meet the provisions of 15A NCAC 2B .0201(d)(1)(B)(iv), (v) and (vii), and 15A NCAC 2B .0203; new industrial connections and expansions to existing municipal discharges with a pretreatment program pursuant to 15A NCAC 2H .0904 are allowed; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard; the Class WS-II or WS-III classifications may be used to protect portions of Class WS-IV water supplies. For reclassifications of these portions of WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more

protective classification requested by local governments will be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and effective appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

(3) Quality Standards Applicable to Class WS-IV Waters:

- (A) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in Subparagraph (2) of this Paragraph and Rule .0104 of this Subchapter; and none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharges or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
- (B) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;
 - (i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed or Protected Area:
 - (I) Low Density Option: Development activities which require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the

North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission must be limited to no more than either: two dwelling units of single family detached development or two duplexes per acre (or 20,000 square foot lot excluding road frontage) or 24 percent built-upon ~~on~~ area; for all other residential and non-residential development; or three dwelling units per acre or 36 percent built-upon area for projects without curb and gutter street system in the protected area outside of critical area; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;

- (II) High Density Option: If new development activities which require a Sedimentation/Erosion Control Plan exceed the low density requirements of Subparagraphs (f)(3)(B)(i)(I) of this Rule then development must control the runoff from the first inch of rainfall; new residential and non-residential development not to exceed 70 percent built-upon area;

- (III) Land within the critical and protected area will be deemed compliant with the density requirements if the following two conditions are met: The density of all existing development at the time of reclassification does not exceed ~~meets~~ the density requirement when densities are averaged throughout the entire area; ~~All new development meets these density requirements on a project-by-project basis~~;

- (IV) Clustering of Cluster development is allowed on a project-by-project basis as

follows:

(1) Overall density of the project meets associated density or stormwater control requirements;

(2) Buffers meet the minimum statewide water supply watershed protection requirements;

(3) Built-upon areas ~~shall be~~ are designed and sited to minimize stormwater runoff impact to the receiving waters, and minimize concentrated stormwater flow, maximize the flow length through vegetated areas;

(4) Areas of concentrated development are located in upland areas and away to the maximum extent practicable, from surface waters and drainageways;

(5) Remainder of tract to remain in vegetated or natural state;

(6) Where the development has an incorporated property owners association, the title of the open space shall be conveyed to the association for management. Where a property owners association is not incorporated, a maintenance agreement shall be filed with the property deeds; and

(7) Cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;

- (V) If local governments choose the high density development option which requires engineered stormwater controls, then they will assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104(f) of this Subchapter;

- (VI) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option requirements as specified in Subparagraphs (f)(3)(B)(i)(I) or (f)(3)(B)(ii)(I) of this Paragraph, otherwise a minimum 30 foot vegetative buffer for development is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank shoreline stabilization;
- (VII) No new development is allowed in the buffer; water dependent structures, or other structures, such as flag poles, signs and security lights, which result in only diminimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;
- ~~(VIII) Maintain inventory of all hazardous materials used and stored in the watershed or protected area; spill/failure containment plan and appropriate safeguards against contamination are required; waste minimization and appropriate recycling of materials is encouraged;~~
- (VIII) For local governments that do not use the high density option, a maximum of five percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1995 may be developed with new

development projects and expansions of existing development of up to 70 percent built-upon surface area in addition to the new development approved in compliance with the appropriate requirements of Subparagraph (f)(3)(B)(i)(I) of this Paragraph. For local governments that do not use the high density option and, in addition, do not utilize the sedimentation\erosion control exemption, a maximum of 10 percent of each jurisdiction's portion of the watershed, outside of the critical area, delineated on July 1, 1995 may be developed with new development projects and expansions of existing development of up to 70 percent built-upon surface area in addition to the new development approved in compliance with the appropriate requirement of Subparagraph (f)(3)(B)(i)(I) of this Paragraph. For expansions to existing development, the existing built-upon surface area is not counted toward the allowed 70 percent built-upon area. A local government having jurisdiction within the watershed may transfer, in whole or part, its right to the 5 percent/70 percent or 10 percent/70 percent land area, whichever is applicable, to another local government within the watershed upon submittal of a joint resolution and approval by the Commission. When designated water supply watershed area is composed of public land, such as National Forest, local governments may count the public land acreage within the designated watershed area outside of the critical area in figuring the

- acreage allowed under this provision. For local governments that do not use the high density option, each project must to the maximum extent practicable minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (I) Low Density Option: New development activities which r e q u i r e a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission must be limited to no more than two dwelling units a single family detached development or two duplexes per acre or 20,000 square foot lot excluding road frontage or 24 percent built-upon area; for all other residential and non-residential; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (II) High Density Option: If new development density exceeds either two dwelling units per acre or 24 percent built upon area then the low density requirements specified in Subparagraph (f)(3)(B)(ii)(I) of this Rule engineered stormwater controls must be used to control runoff from the first inch of rainfall; new residential and non-residential new development not to exceed 50 percent built-upon area;
- (III) No new permitted sites for land application of ~~sludge~~ residuals or petroleum contaminated soils are allowed;
- (IV) No new landfills are allowed;
- (C) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (D) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;
- (E) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (F) Total dissolved solids: not greater than 500 mg/l;
- (G) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-IV waters:
- (I) Barium: 1.0 mg/l;
- (II) Chloride: 250 mg/l;
- (III) Manganese: 200 ug/l;
- (IV) Nickel: 25 ug/l;
- (V) Nitrate nitrogen: 10.0 mg/l;
- (VI) 2,4-D: 100 ug/l;
- (VII) 2,4,5-TP (Silvex): 10 ug/l;
- (VIII) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-IV waters:
- (I) Beryllium: 6.8 ng/l;
- (II) Benzene: 1.19 ug/l;
- (III) Carbon tetrachloride: 0.254

- ug/l;
- (IV) Chlorinated benzenes: 488 ug/l;
- (V) Dioxin: 0.000013 ng/l;
- (VI) Hexachlorobutadiene: 0.445 ug/l;
- (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (IX) Tetrachloroethylene: 0.8 ug/l;
- (X) Trichloroethylene: 3.08 ug/l;
- (XI) Vinyl Chloride: 2 ug/l;
- (XII) Aldrin: 0.127 ng/l;
- (XIII) Chlordane: 0.575 ng/l;
- (XIV) DDT: 0.588 ng/l;
- (XV) Dieldrin: 0.135 ng/l;
- (XVI) Heptachlor: 0.208 ng/l.

(g) Class WS-V Waters.

- (1) Best Usage of Waters. Waters protected as water supplies which are generally upstream and draining to Class WS-IV waters or waters previously used for drinking water supply purposes or waters used by industry to supply their employees, but not municipalities or counties, with a raw drinking water supply source, although this type of use is not restricted to a WS-V classification. The Commission may consider a more protected classification for the water supply if a resolution requesting a more protective classification is submitted from all local governments having land use jurisdiction in the affected watershed; no categorical restrictions on watershed development or wastewater discharges are required, however, the Commission or its designee may apply appropriate management requirements as deemed necessary for the protection of waters downstream of receiving waters (15A NCAC 2B .0203); suitable for all Class C uses;
- (2) Conditions Related to Best Usage. Waters of this class are protected water supplies; the waters, following treatment required by the Division of Environmental Health, will meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the

national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;

- (3) Quality Standards Applicable to Class WS-V Waters:
 - (A) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none which will have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharges or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
 - (B) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;
 - (C) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
 - (D) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a

- different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;
- (E) Total hardness: not greater than 100 mg/l as calcium carbonate;
 - (F) Total dissolved solids: not greater than 500 mg/l;
 - (G) Toxic and other deleterious substances:
 - (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-V waters:
 - (I) Barium: 1.0 mg/l;
 - (II) Chloride: 250 mg/l;
 - (III) Manganese: 200 ug/l;
 - (IV) Nickel: 25 ug/l;
 - (V) Nitrate nitrogen: 10.0 mg/l;
 - (VI) 2,4-D: 100 ug/l;
 - (VII) 2,4,5-TP (Silvex): 10 ug/l;
 - (VIII) Sulfates: 250 mg/l.
 - (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-V waters:
 - (I) Beryllium: 6.8 ng/l;
 - (II) Benzene: 1.19 ug/l;
 - (III) Carbon tetrachloride: 0.254 ug/l;
 - (IV) Chlorinated benzenes: 488 ug/l;
 - (V) Dioxin: 0.000013 ng/l;
 - (VI) Hexachlorobutadiene: 0.445 ug/l;
 - (VII) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
 - (VIII) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
 - (IX) Tetrachloroethylene: 0.8 ug/l;
 - (X) Trichloroethylene: 3.08 ug/l;
 - (XI) Vinyl Chloride: 2 ug/l;
 - (XII) Aldrin: 0.127 ng/l;
 - (XIII) Chlordane: 0.575 ng/l;
 - (XIV) DDT: 0.588 ng/l;
 - (XV) Dieldrin: 0.135 ng/l;
 - (XVI) Heptachlor: 0.208 ng/l.
 - (h) Class B Waters.
 - (1) Best Usage of Waters. Primary

- recreation and any other best usage specified by the "C" classification;
- (2) Conditions Related to Best Usage. The waters will meet accepted standards of water quality for outdoor bathing places and will be of sufficient size and depth for primary recreation purposes. Sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violating a water quality standard;
- (3) Quality standards applicable to Class B waters:
 - (A) Sewage, industrial wastes, or other wastes: none which are not effectively treated to the satisfaction of the Commission; in determining the degree of treatment required for such waste when discharged into waters to be used for bathing, the Commission will consider the quality and quantity of the sewage and wastes involved and the proximity of such discharges to waters in this class; discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste can not be reliably treated to ensure the protection of primary recreation;
 - (B) Organisms of coliform group: fecal coliforms not to exceed geometric mean of 200/100 ml (MF count) based on at least five consecutive samples examined during any 30-day period and not to exceed 400/100 ml in more than 20 percent of the samples examined during such period.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0301 CLASSIFICATIONS: GENERAL

(a) Schedule of Classifications. The classifications assigned to the waters of the State of North Carolina are set forth in the schedules of classifications and water quality standards assigned to the waters of the river basins of North Carolina, 15A NCAC 2B .0302 to .0317. These classifications are based upon the existing or contemplated best usage of the various streams and segments of streams in the basin, as determined

through studies and evaluations and the holding of public hearings for consideration of the classifications proposed.

(b) Stream Names. The names of the streams listed in the schedules of assigned classifications were taken as far as possible from United States Geological Survey topographic maps. Where topographic maps were unavailable, U.S. Corps of Engineers maps, U.S. Department of Agriculture soil maps, and North Carolina highway maps were used for the selection of stream names.

(c) Classifications. The classifications assigned to the waters of North Carolina are denoted by the letters WS-I, WS-II, WS-III, WS-IV, WS-V, B, C, SA, SB, and SC in the column headed "class." A brief explanation of the "best usage" for which the waters in each class must be protected is given as follows:

Fresh Waters

Class WS-I: waters protected as water supplies which are in natural and undeveloped watersheds; in public ownership; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint source and stormwater discharge of pollution are required; suitable for all Class C uses;

Class WS-II: waters protected as water supplies which are generally in predominantly undeveloped watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint source and stormwater discharge of pollution are required; suitable for all Class C uses;

Class WS-III: waters protected as water supplies which are

Class WS-IV:

Class WS-V:

generally in low to moderately developed watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint source and stormwater discharge of pollution are required; suitable for all Class C uses;

waters protected as water supplies which are generally in moderately to highly developed watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint source and stormwater discharge of pollution are required; suitable for all Class C uses;

waters protected as water supplies which are generally upstream and draining to Class WS-IV waters or waters previously used for drinking water supply purposes or waters used by industry to supply their employees, but not municipalities or counties, with a raw drinking water supply source, although this type of use is not restricted to a WS-V classification; no categorical restrictions on watershed development or treated wastewater discharges are required, however, the Commission or its designee may apply appropriate management requirements as deemed

	necessary for the protection of downstream receiving waters (15A NCAC 2B .0203); suitable for all Class C uses;		
Class B:	primary recreation and any other usage specified by the "C" classification;		
Class C:	aquatic life propagation and survival, fishing, wildlife, secondary recreation, and agriculture.		
Tidal Salt Waters			
Class SA:	shellfishing for market purposes and any other usage specified by the "SB" and "SC" classification;		
Class SB:	primary recreation and any other usage specified by the "SC" classification;		
Class SC:	aquatic life propagation and survival, fishing, wildlife, and secondary recreation.	ORW:	Outstanding Resource Waters which are unique and special waters of exceptional state or national recreational or ecological significance which require special protection to maintain existing uses.
Supplemental Classifications			
Trout Waters:	Suitable for natural trout propagation and maintenance of stocked trout;	FWS:	<u>Future Water Supply Waters which are waters intended for future drinking water supply purposes.</u>
Swamp Waters:	Waters which have low velocities and other natural characteristics which are different from adjacent streams;		
NSW:	Nutrient Sensitive Waters which require limitations on nutrient inputs;		
HQW:	High Quality Waters which are waters that are rated as excellent based on biological and physical/chemical characteristics through division monitoring or special studies, native and special native trout waters (waters and their tributaries) designated by the Wildlife Resources Commission, primary nursery		
			(d) Water Quality Standards. The water quality standards applicable to each classification assigned are those established in 15A NCAC 2B .0200, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina, as adopted by the North Carolina Environmental Management Commission.
			(e) Index Number.
		(1)	Reading the Index Number. The index number appearing in the column so designated is an identification number assigned to each stream or segment of a stream, indicating the specific tributary progression between the main stem stream and the tributary stream.
		(2)	Cross-Referencing the Index Number. The inclusion of the index number in the schedule is to provide an adequate

cross reference between the classification schedules and an alphabetic list of streams.

(f) **Classification Date.** The classification date indicates the date on which enforcement of the provisions of Section 143-215.1 of the General Statutes of North Carolina became effective with reference to the classification assigned to the various streams in North Carolina.

(g) **Reference.** Copies of the schedules of classifications adopted and assigned to the waters of the various river basins may be obtained at no charge by writing to:

Director
Division of Environmental Management
Department of Environment, Health,
and Natural Resources
Post Office Box 29535
Raleigh, North Carolina 27626-0535

(h) **Places where the schedules may be inspected:**

Division of State Library
Archives -- State Library Building
109 E. Jones Street
Raleigh, North Carolina.

(i) **Unnamed Streams.**

(1) Any stream which is not named in the schedule of stream classifications carries the same classification as that assigned to the stream segment to which it is tributary except:

- (A) unnamed streams specifically described in the schedule of classifications; or
- (B) unnamed freshwaters tributary to tidal saltwaters will be classified "C"; or
- (C) after November 1, 1986, any newly created areas of tidal saltwater which are connected to Class SA waters by approved dredging projects will be classified "SC" unless case-by-case reclassification proceedings are conducted.

(2) The following river basins have different policies for unnamed streams entering other states or for specific areas of the basin:

Hiwassee River Basin (Rule .0302);
Little Tennessee River Basin and
Savannah River Drainage Area (Rule
.0303); French Broad River Basin (Rule
.0304); Watauga River Basin (Rule
.0305); Broad River Basin (Rule
.0306); New River Basin (Rule .0307);
Catawba River Basin (Rule .0308);

Yadkin-Pee Dee River Basin (Rule
.0309); Lumber River Basin (Rule
.0310); Roanoke River Basin (Rule
.0313); Tar-Pamlico River Basin (Rule
.0316); Pasquotank River Basin (Rule
.0317).

*Statutory Authority G.S. 143-214.1; 143-215.1;
143-215.3(a)(1).*

TITLE 19A - DEPARTMENT OF TRANSPORTATION

*Notice is hereby given in accordance with G.S.
150B-21.2 that the North Carolina Department of
Transportation, North Carolina Division of Motor
Vehicles intends to amend rule cited as 19A NCAC
03D .0227.*

*The proposed effective date of this action is June
1, 1995.*

*Instructions on How to Demand a Public Hearing
(must be requested in writing within 15 days of
notice):*

*A demand for a public hearing must be made in
writing and mailed to Emily Lee, N.C. DOT, P.O.
Box 25201, Raleigh, NC 27611. The demand must
be received within 15 days of this Notice.*

*Reason for Proposed Action: Amendment states
condition for exemption of mobile/manufactured
home dealers' Certificate of Origin and title.*

*Comment Procedures: Any interested person may
submit written comments on the proposed rule by
mailing the comments to Emily Lee, N.C. DOT,
P.O. Box 25201, Raleigh, NC 27611 within 30
days after the proposed rule is published or until
the date of any public hearing held on the pro-
posed rule, whichever is longer.*

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3D - ENFORCEMENT SECTION

SECTION .0200 - MOTOR VEHICLE DEALER, SALES, DISTRIBUTOR AND FACTORY REPRESENTATIVE LICENSE

.0227 VEHICLES OFFERED FOR SALE ON A FLOOR PLAN LIEN

(a) Any dealer offering for sale a vehicle on which a financial interest is held by another party (floor plan lien) shall at the time of sale, satisfy the floor plan lien and obtain the title from the floor plan lienholder, execute the title documents and deliver them to the purchaser or the lienholder as required by G.S. 20-52.1, G.S. 20-72 and G.S. 20-75 at the time the vehicle is delivered.

(b) Manufacturers Certificate of Origin and titles may be retained by the floor plan lienholder so long as the Manufacturers Certificate of Origin and titles are located within the boundaries of North Carolina; provided the dealer has in possession, available for inspection, an invoice from the manufacturer or distributor and a floor plan disclosure form completed, dated and signed by both parties. Mobile/manufactured home dealers shall be exempt from the requirement that the Manufacturer's Certificate of Origin and title be located within the boundaries of North Carolina. All other provisions of this Rule shall apply to mobile/manufactured home dealers.

Statutory Authority G.S. 20-302.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

CHAPTER 1 - NORTH CAROLINA ACUPUNCTURE LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Acupuncture Licensing Board intends to adopt rules cited as 21 NCAC 1 .0104 and .0301.

The proposed effective date of this action is June 1, 1995.

The public hearing will be conducted at 1:00 p.m. on March 31, 1995 at the Pack Memorial Library Auditorium, Asheville, NC.

Reason for Proposed Action: To adopt rules to establish definitions for acupuncture and procedures for Continuing Education.

Comment Procedures: Any person may submit comments to the North Carolina Acupuncture Licensing Board, P.O. Box 25171, Asheville, NC

28813, or speak orally to the Rule-making Coordinator on March 31, 1995 at 4:00 p.m. at Pack Memorial Library Auditorium in Asheville, NC. All comments must be received, by the Board no later than March 31, 1995.

SECTION .0100 - LICENSURE

.0104 DEFINITIONS

The following definitions shall apply throughout this Chapter:

- (1) "Acupuncture adjunctive therapies" include, but are not limited to, auricular and nose, face, hand, foot, and scalp acupuncture therapy; stimulation to acupuncture points and channels by any of the following: needles, cupping, thermal methods, including moxibustion, magnets, gwa-sha scraping techniques.
- (2) "Acupuncture diagnostic techniques" include, but are not limited to, the use of observation, listening, smelling, inquiring, palpation, pulse diagnosis, tongue diagnosis, hara diagnosis, physiognomy, five element correspondence, ryodoraku, akabani, electro-acupuncture.
- (3) "Acupuncture needles" mean solid filiform needles and includes, but are not limited to, intradermal, plum blossom, press tacks, prismatic needles.
- (4) "Dietary guidelines" include, but are not limited to, nutritional counseling and the recommendation of food and supplemental substances.
- (5) "Electrical stimulation" include, but are not limited to, the treatment or diagnosis of energetic imbalances using TENS, Piezo electrical stimulation, acuscope therapy, auricular therapy devices, percutaneous and transcutaneous electrical nerve stimulation.
- (6) "Herbal medicine" includes, but is not limited to, tinctures, patent remedies, decoction, powders, diluted herbal remedies, freeze dried herbs, salves, poultices, medicated oils and liniments.
- (7) "Massage and manual techniques" include, but are not limited to, acupressure, reflexology, shiatsu, and Tui-Na, therapeutic touch, qi healing, polarity therapy, and medical qi gong.
- (8) "Therapeutic exercise" includes, but is not limited to, qi gong, Taoist self-cultivation exercises, dao yin, tai qi chuan, ba gua, neuro muscular re-education, medi-

- (9) tative exercises, life counseling.
"Thermal methods" include, but are not limited to, moxibustion, herbal poultices, electro-magnetic wave, ultraviolet, ultra sound, laser acupuncture, hot and cold packs.

Statutory Authority G.S. 90-454.

**SECTION .0200 - RESERVED FOR
FUTURE CODIFICATION**

**SECTION .0300 - CONTINUING
EDUCATION**

**.0301 STANDARDS FOR CONTINUING
EDUCATION**

(a) Applicants for license renewal shall obtain 40 continuing education units (CEU) every two years. CEU credit shall be given only for courses which have content relating to Acupuncture or Oriental Medicine. The North Carolina Acupuncture Licensing Board will accept CEU from any of the following:

- (1) American Association of Acupuncture and Oriental Medicine (AAAOM) certified continuing education courses;
- (2) CEU offered by individual member schools of the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSCAOM);
- (3) National Alliance for Acupuncture and Oriental Medicine Certified continuing education courses.

(b) All CEU programs not meeting the requirements of Subparagraphs (a)(1)-(3) of this Rule must be approved by the Board, including any course taught outside of North Carolina. All CEU held within the state of North Carolina must apply according to Subparagraphs (b)(1)-(6) of this Rule. Approval shall be given if the course has content relating to Acupuncture or Oriental Medicine and updates or refreshes the clinical skills or knowledge of an acupuncturist.

- (1) Applications for CEU program approval shall be submitted to the Board office at least 60 days prior to the date of presentation.
- (2) Each CEU program application shall contain:
 - (A) a detailed program outline or syllabus;
 - (B) a current curriculum vitae of each speaker or lecturer;

- (C) the procedure to be used for recording attendance; and

- (D) a fee as established in Rule .0103 of this Chapter.

- (3) The Executive Secretary of the Board shall notify the provider of the Board's decision on each application.

- (4) Upon approval of a CEU, the Board shall assign an identification number to that program.

- (5) If a CEU is not approved by the Board, the reasons for the rejection shall be stated by the Executive Secretary in a letter to the provider.

- (6) If approved, the provider may identify the program as "approved by the North Carolina Acupuncture Licensing Board for purposes of Continuing Education Units" in any advertisement.

(c) Programs that do not meet the approval of Subparagraphs (a)(1)-(3) of this Rule must go through the approval process of Subparagraphs (b)(1)-(6) of this Rule.

(d) One continuing education unit is defined as one contact hour or 50 minutes.

(e) CEU hours are not retroactive nor cumulative. All credit hours must be earned within the biennium for which they are claimed.

(f) A continuing education unit or portions thereof which are primarily devoted to administrative or business management aspects of Acupuncture practice shall not be approved for Continuing Education Credit.

Statutory Authority G.S. 90-454.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend rule(s) cited as 25 NCAC 1E .0203, .0204, .0207, .0210, .0301, .0305, .0311, .0312, .0314, .0315, .1302 - .1306; adopt 25 NCAC 1E .0216, .0317, 1N .0201 - .0206; and repeal 25 NCAC 1C .0211.

The proposed effective date of this action is June 1, 1995.

The public hearing will be conducted at 9:00 a.m. on April 6, 1995 at the State Personnel Development Center, 101 West Peace Street, Raleigh, North Carolina.

Reason for Proposed Action:

25 NCAC 1C .0211 - This Rule is proposed to be repealed in order to adopt new rules that will insure that state employees are provided necessary personal protective equipment in order to perform job functions in a safe and healthful work environment.

25 NCAC 1E .0203, .0204, .0207, .0210 - These Rules are proposed to be amended in order to offer guidance and clarification to the state agencies and universities in implementing changes regarding the method of paying terminal leave, the deduction for overdrawn leave, and including time-limited appointment for eligibility to earn leave.

25 NCAC 1E .0216 - This Rule is proposed to be adopted in order to offer guidance and clarification to state agencies and universities in accounting of prior service to be considered as total state service.

25 NCAC 1E .0301, .0305, .0311, .0312, .0314, .0315 - These Rules are proposed to be amended in order to offer guidance and clarification to state agencies and universities in the change of method for employees exhausting leave prior to going on leave without pay, as well as changes in definition of immediate family and changes in the deduction of overdrawn leave.

25 NCAC 1E .0317 - The Rule is proposed to be adopted in order to offer guidance and clarification to state agencies and universities in defining the "immediate family".

25 NCAC 1E .1302 - .1306 - These Rules are proposed to be amended in order to offer guidance and clarification to state agencies and universities in administering the voluntary shared leave procedures.

25 NCAC 1N .0201 - .0206 - These Rules are proposed to be adopted in order to insure that state employees are provided necessary personal protective equipment in order to perform job functions in a safe and healthful work environment.

Comment Procedures: Interested persons may present statements either orally or in writing at the Public Hearing or in writing prior to the hearing by mail addressed to: Patsy Smith Morgan, Office of State Personnel, 116 West Jones Street, Raleigh, North Carolina 27603.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1C - PERSONNEL ADMINISTRATION

SECTION .0200 - GENERAL EMPLOYMENT POLICIES

.0211 PERSONAL PROTECTIVE EQUIPMENT

~~Effective May 1, 1976, the state will furnish, at no cost to the employee, certain personal protective equipment as required by the North Carolina Occupational Safety and Health Act of 1973. The State's responsibility is noted in each category listed below:~~

EQUIPMENT

GUIDE

(1) ~~Eye Protection~~

(a) ~~Safety Glasses~~

~~Non-prescription~~

~~100% State~~

~~Required when there is danger~~

~~from flying particles from such~~

~~operations as: striking metal to~~

- | | |
|---------------------------------------|--|
| Prescription | metal, hammering nails, sawing, |
| Employee pro | grinding, sanding, drilling, |
| vides cost of | metal cutting, etc. |
| examination; | |
| State provides | |
| cost of lenses | |
| and frames. | |
| (b) Safety Glasses with | Required to protect employees from |
| side shields | flying particles that may enter |
| Non prescription | at an angle behind safety glasses |
| 100% State | when exposed to operations such |
| Prescription | as those listed in (1)(a) of this |
| Employee pro | Rule. Usually required where two |
| vides cost of | or more employees are working in |
| examination; | close proximity. |
| State provides | |
| cost of lenses | |
| and frames. | |
| (e) Goggles 100% State | |
| (i) Chemical | Required to protect employees' |
| | eyes from chemical splashes or |
| | sprays while handling or exposed |
| | to chemicals such as acids, |
| | caustics, solvents, toxic liquids, |
| | or other liquids. |
| (ii) Dust/Particles | Required to protect employees' |
| | eyes from toxic and/or abrasive |
| | dust and particles. |
| (iii) Welding | Required to protect employees' |
| | eyes exposed to welding operations. |
| (2) Welding Hood with | Required for arc welding. |
| lenses 100% State | |
| (3) Face Shield 100% State | Required to protect employees' |
| | eyes and face when exposed to |
| | those operations listed in (1) |
| | of this Rule. The face shield is |
| | necessary when the probability of |
| | facial injury is great; such as |
| | when pouring acid. |
| (4) Hard Hat 100% State | Required to protect employees' |
| | head from falling objects such as |
| | overhead tools, bricks, boards, |
| | equipment, building material, |
| | scaffolds, etc. |
| (5) Safety Hat Liners | Required for cold weather when |
| 100% State | safety hat is worn. |
| (6) Respirators 100% State | |
| (a) Dust (Filter) | Required to protect employees' |
| | lungs from nuisance and toxic |
| | dusts. Specific respirators for |
| | protection against the type dust |
| | exposure must be worn. |
| | Required for all dust exposure |
| | above the TLV recorded in the OSHA |
| | Standard. |

PROPOSED RULES

- | | |
|--|---|
| (b) Air supplied with
—facepiece or
—sandblasting
—hood | Required to provide respirable air
for employees exposed to toxic
fumes, vapors, and gases that are
not immediately dangerous to life. |
| (e) Organic vapor,
—paint spray,
—insecticide,
—etc. | Required when spray painting,
spraying insecticides, and when
other toxic vapors are present in
the employee's work environment. |
| (7) Self-contained breath
—ing air mask
—100% State | Required to enter toxic or oxygen-
deficient atmospheres and/or
rescue personnel in such atmospheres.
Should be available near tank entry
location for rescue purposes.
Generally used in areas that may be
immediately dangerous to life. |
| (8) Gloves | |
| (a) Electrical (Rubber)
—100% State | Required to prevent employee
electrocution from accidental
contact with energized equipment.
Shall not be used as primary
protection rather than grounding
and deactivation. Must be visually
inspected prior to each use to verify
integrity and current quarterly elec-
trical continuity tests. Each glove
must be conspicuously marked with
last test date and expiration date. |
| (b) Asbestos or
—Aluminized
—100% State | Required to protect employees from
hot liquid or objects such as molten
metal and heated rivets. Required to
handle objects with temperatures
above 140 degrees F. |
| (c) Leather
—100% Employee
—Welder's
—100% State | Required to protect employees'
hands from rough, sharp objects
that may penetrate canvas gloves
such as sharp metal edges of
sheetmetal and welding sparks. |
| (d) Canvas
—100% Employee | Required to protect employees'
hands from wooden splinters, rough
edges and friction burns (blisters). |
| (e) Metal Mesh
—100% State | Required to protect employees' hands
from sharp knives, glass, etc. |
| (f) Rubber and Plastic
—(neoprene or
—polyvinyl chloride)
—100% State | Required for protection against
chemical hazards where other glove
material will not suffice. |
| (9) Coveralls or Aprons | |
| (a) Canvas 100% State | Required to protect employees from
contact with toxic dry chemicals
such as antimony, lead, biological
hazards, etc. |
| (b) Non Porous
—(Plastic/rubber)
—100% State | Required to protect employees from
contact with toxic liquid chemicals
and biological hazards. |
| (c) Leather or other | Required for protection of welders |

- ~~— flame resistant~~ ~~against flying sparks.~~
- ~~— material~~
- ~~— 100% State~~
- (10) ~~Foot Protection~~
- (a) ~~Safety Shoes~~ ~~For employees who are required to~~
~~wear safety shoes, under the provi-~~
~~sions of the N.C. Occupational Safety~~
~~and Health Act of 1973, the state~~
~~will reimburse the employee for the~~
~~purchase cost not to exceed fifty-~~
~~four dollars (\$54.00) for one pair~~
~~of shoes per year. The employee may~~
~~purchase shoes personally and be~~
~~reimbursed or an agency may supply~~
~~shoes under the rules and regulations~~
~~of the State Purchase and Contract~~
~~Division not to exceed a unit cost of~~
~~fifty four dollars (\$54.00). If the~~
~~employee is personally reimbursed,~~
~~Forms BD 403 with attached receipt~~
~~shall be used.~~
- (b) ~~Rubber Boots~~ ~~Required to keep employees' feet dry~~
~~— 100% State~~ ~~when required to routinely work in~~
~~wet locations such as flooded~~
~~ditches.~~
- (11) ~~Safety Belts and~~ ~~Required to protect employees from~~
~~Life Lines~~ ~~falling while working at elevated~~
~~— 100% State~~ ~~(10 feet or greater) locations not~~
~~protected by standard guardrails or~~
~~safety nets.~~
- (12) ~~Safety Net~~ ~~Required to protect employees work-~~
~~— 100% State~~ ~~ing over 25 feet above ground or~~
~~or water level where other protective~~
~~devices are impractical. Required~~
~~for such operations as erecting~~
~~steel.~~
- (13) ~~Ear Protection~~ ~~As required by established standards.~~
~~— 100% State~~
- (14) ~~Life Rings~~ ~~Required with 90 feet of line near~~
~~— 100% State~~ ~~each barge.~~
- (15) ~~Life Jacket~~ ~~Required when exposed to falls into~~
~~— 100% State~~ ~~water over five feet deep when guard-~~
~~rails or safety nets are not~~
~~provided.~~
- (16) ~~Other~~ ~~Additional items will be added as~~
~~approved by the State Labor Department~~
~~and Office of State Personnel.~~

Statutory Authority G.S. 126-4.

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .0200 - VACATION LEAVE

.0203 LEAVE CREDITS

(a) Vacation leave credits shall be provided for a full-time or part-time (half-time or ~~more over~~) employee with a permanent, trainee, time-limited or probationary appointment employee who is in pay status for one-half of the regularly scheduled workdays and holidays in a pay period. The rate is based on length of total ~~permanent~~ state service. Leave for part-time employees shall be computed as a percentage of total amount provided to a full-time employee.

(b) The following schedule indicates graduated vacation leave granted:

<u>Years of Total</u> <u>State Service</u>	<u>Hours</u> <u>Granted</u> <u>Each Month</u>	<u>Hours</u> <u>Granted</u> <u>Each Year</u>	<u>Days</u> <u>Granted</u> <u>Each Year</u>
Less than 2 years	7 hrs. 50 mins.	94	11 3/4
2 but less than 5 years	9 hrs. 10 mins.	110	13 3/4
5 but less than 10 years	11 hrs. 10 mins.	134	16 3/4
10 but less than 15 years	13 hrs. 10 mins.	158	19 3/4
15 but less than 20 years	15 hrs. 10 mins.	182	22 3/4
20 years or more	17 hrs. 10 mins.	206	25 3/4

~~(c) Total State Service Defined. Total state service is the time of full time or part time (half time or over) permanent, trainee, probationary or provisional employment, whether subject to or exempt from the State Personnel Act. If an employee so appointed is in pay status or is on authorized military leave for one half of the regularly scheduled workdays and holidays in a pay period, credit shall be given for the entire pay period. They will receive full credit for each pay period the employees are in pay status for one half of their scheduled workdays and holidays.~~

Statutory Authority G.S. 126-4; 126-8.

.0204 TOTAL STATE SERVICE DEFINED

~~(a) Aggregate state service shall be credited for full time or part time (half time or over) permanent, trainee, probationary, or provisional employment, whether subject to or exempt from the State Personnel Act. If an employee is in pay status (working, exhausting vacation or sick leave, or drawing worker's compensation not to exceed twelve months) or is on authorized military leave for one half or more of the regularly scheduled workdays in a month, credit shall be given for the entire month. Permanent part time employees are credited with aggregate state service on a pro rata basis; it is computed as a percentage of the amount the employee would be credited if permanent full time.~~

(a) Total state service is the time of full-time or part-time (half-time or over) employment of an employee with a permanent, trainee, probationary or time-limited appointment, whether subject to or exempt from the State Personnel Act. If an employee so appointed is in pay status or is on authorized military leave for one-half of the regularly scheduled workdays and holidays in a pay period, credit shall be given for the entire pay period. They will receive full credit for each pay period the employees are in pay status for one-half of their scheduled workdays and holidays.

(b) Credit toward total aggregate state service shall also be given for:

- (1) employment with other governmental units which are now state agencies (for example: county highway maintenance forces, War Manpower Commission, the judicial system);
- (2) authorized military leave from any of the governmental units for which service credit is granted, provided the employee returns within the time limits outlined in the state military leave policies (see 25 NCAC 1E, Section .0800, Rules .0801 - .0819);
- (3) employment with the county agricultural extension service, community college system and the public school system of North Carolina, with the provision that a school year is equivalent to one full year;
- (4) employment with a local mental health, public health, social services or emergency management agency in North Carolina;
- (5) employment with the General Assembly (except for legislators, participants in the Legislative Intern Program and pages).

Statutory Authority G.S. 126-4; 126-8.

.0207 LEAVE CHARGES

Leave shall be charged in units of time appropriate and consistent with the responsibility of managing absences in keeping with operational needs. Leave to be paid as terminal leave and leave to be exhausted before ~~disability retirement or~~ leave without pay shall be in units nearest to a tenth of an hour, i.e., 1/10 of an hour for each six minutes of one hour.

Statutory Authority G.S. 126-4.

.0210 SEPARATION: PAYMENT OF VACATION LEAVE

(a) Lump sum payment for leave is made only at the time of separation. An employee shall be paid in a lump sum for accumulated leave not to exceed a maximum of 240 hours when separated from state service due to resignation, dismissal, reduction in force or death.

An employee is not entitled to any scheduled holiday occurring after the last day of work. The employee ceases to accumulate leave and ceases to be entitled to take sick leave. The last day of work is the date of separation. Employees separating from state service due to service retirement or early retirement may elect to exhaust vacation leave after the last day of work but prior to the effective date of retirement. All benefits accrue while leave is being exhausted. If leave is exhausted, the last day of leave is the date of separation. Any unused leave not exhausted must be paid in a lump sum not to exceed 240 hours. If no leave is exhausted, the last day of work is the date of separation.

(b) If an employee separates and is overdrawn on leave, it will be necessary to make deductions from the final salary check. It will be deducted in ~~full hour~~ units nearest to a tenth of an hour, i.e., a full hour for any part of an hour overdrawn 1/10 of an hour for each six minutes overdrawn.

(c) Payment for leave may be made on the regular payroll or on a supplemental payroll, reflecting the number of days of leave and the amount of payment. Leave may be paid through the ~~last full~~ nearest tenth of an hour of unused leave. This will be charged to the budget subhead under which the employee's position was charged. A separate check must be issued for any part of any travel due.

(d) Retirement deduction shall be made from all leave payments.

(e) Receipt of lump sum leave payment and

retirement benefit shall not be considered as dual compensation.

(f) In the case of a deceased employee, payment for unpaid salary, leave, and travel must be made, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, payment must be made in accordance with the provisions of G.S. 28A-25.6.

Statutory Authority G.S. 28A-25.6(a),(c); 126-4.

.0216 ACCOUNTING FOR CREDITABLE SERVICE

The agency shall be responsible for informing each employee of the types of prior service which are eligible to be counted as total state service. If the employee fails to produce evidence of prior service at the time of employment and later produces such evidence, it creates a cumbersome, time consuming process to adjust leave records. When this occurs, credit will be allowed for the service and the earnings rate will be adjusted; however, retroactive adjustments will only be allowed for the previous twelve months. Exceptions will be made if the agency is at fault or fails to properly detect prior service.

Statutory Authority G.S. 126-4; 126-8.

SECTION .0300 - SICK LEAVE

.0301 SICK LEAVE CREDITS

(a) Sick leave credits at the rate of 8 hours per month or 96 hours per year shall be provided for a full-time or part-time (half-time or ~~more over~~) employee with a permanent career, trainee, or probationary or time-limited appointment employee who is in pay status for one-half of the regularly scheduled workdays and holidays in a pay period.

(b) Leave for part-time employees shall be computed as a percentage of total amount provided to a full-time employee.

Statutory Authority G.S. 126-4; 126-8.

.0305 USE OF SICK LEAVE

(a) Sick leave may be used for:

(1) illness or injury which prevents an employee from performing usual duties; ~~and for~~

(2) the actual period of temporary disability connected with childbearing or recovery therefrom; as defined in this Rule;

~~In accordance with the state's policy on Equal~~

~~Employment Opportunity, female employees shall not be penalized in their condition of employment because they require time away from work caused by or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery. Disabilities resulting from pregnancy shall, for sick leave purposes, be treated the same as any other temporary disability suffered by an employee. Accumulated sick leave may be used for the period of actual disability as a result of childbearing or recovery therefrom.~~

- (a) the natural mother may use accumulated sick leave for the actual period of temporary disability caused or contributed to by pregnancy and childbirth.
- (b) a member of the employee's immediate family may request sick leave to care for the mother and newborn infant during the natural mother's period of temporary disability;

Since there is no certainty as to when disability actually begins and ends, a ~~doctors~~ doctor's certificate or other acceptable proof shall be required verifying the employee's period of temporary disability.

~~(b) Sick leave may also be requested for:~~

- (3) ~~(1)~~ medical appointments of the employee's immediate family (this includes dependents);
- (4) ~~(2)~~ the illness of a member of the employee's immediate family;

Note: ~~For this purpose, immediate family is defined as spouse, parents, children (including step relationships) and other dependents living in the household. It is not required that the immediate family be living in the household.~~

- (5) ~~(3)~~ the death of a member of the employee's immediate family;
- (6) donation to a member of the employee's immediate family who qualifies for Voluntary Shared Leave.

Note: ~~For this purpose, immediate family is defined as spouse, parents, children, brother, sister, grandparents, and grandchildren. Also included are the step, half, and in-law relationships.~~

Statutory Authority G.S. 126-4.

.0311 SEPARATION

(a) Sick leave is not allowable in terminal leave payments when an employee separates from state service. ~~It may be exhausted prior to disability retirement.~~

- (b) If an employee separates and is overdrawn

on leave, it will be necessary to make deductions from the final salary check. It will be deducted in full hour units nearest to a tenth of an hour, i.e., a full hour for any part of an hour overdrawn 1/10 of an hour for each six minutes overdrawn.

Statutory Authority G.S. 126-4.

.0312 REINSTATEMENT OF SICK LEAVE

(a) Sick leave shall be reinstated when an employee returns from authorized leave without pay or when reinstated within ~~three~~ five years from any type of separation.

(b) Sick leave may be reinstated when an employee returns to employment subject to G.S. Chapter 126 within ~~three~~ five years after separating from a local government, public school, community college, or technical institute.

Statutory Authority G.S. 126-4.

.0314 SICK LEAVE WITHOUT PAY

An employee may be granted leave without pay under the conditions listed in this Rule. If leave is exhausted, it shall be exhausted to the nearest tenth of an hour. The date separated shall be the last day of work or the last day leave is exhausted, whichever is later. In cases where no leave is available and the disability occurs after the last day of work and before the beginning of the next workday, the date separated shall be the date the disability occurs.

- (1) Employee Illness - For employees not covered under Item (2) of this Rule the agency may grant sick leave without pay up to one year after leave has been exhausted. Extension of sick leave without pay beyond one year shall be managed by and documented by the agency head. An employee shall exhaust accumulated sick leave before going on leave without pay. The agency may require that the employee use accumulated vacation leave before granting leave without pay.
- (2) Disability Income Plan - The agency may grant sick leave without pay up to one year after leave has been exhausted.
 - (a) Short-term Disability - Accumulated sick leave shall be exhausted during the waiting period required prior to short-term disability. Additional sick leave may be exhausted or it may be retained for future use. The employee may

also exhaust vacation leave or may retain part or all of accumulated vacation leave. While exhausting leave, all benefits for which the employee is entitled are credited. Exhaustion of sick or vacation leave during the short-term disability period is in lieu of short-term disability benefits that may be otherwise payable.

(b) Long-term Disability - If an employee is approved for long-term disability following the short-term disability, the employee must be separated from leave without pay. The employee shall be reinstated to the payroll for the purpose of exhausting any unused vacation and sick leave they had prior to going on leave without pay. The employee may choose to apply the sick leave credits toward retirement if the employee would be eligible for service retirement within a five-year period. Under the laws governing the Disability Income Plan, the long-term disability benefit is not payable until the leave has been exhausted.

(3) Family and Medical Leave - Eligible employees shall be granted leave in accordance with 25 NCAC 1E .1400, Family and Medical Leave for a period of 12 workweeks. Additional leave without pay up to one year may be granted by the agency head for the remaining period of disability after the 12 week period in accordance with the provisions of 25 NCAC 1E .1100, Other Leaves Without Pay. Extension of sick leave without pay beyond one year shall be managed by and documented by the agency head.

Statutory Authority G.S. 126-4.

.0315 LEAVE RECORDS

(a) It is the responsibility of each agency to maintain annual records for sick leave for each employee. It shall be optional with each agency as to when and how often the crediting and balancing of an employee's leave record is to be done. However, it must be done at least once by the end of each calendar year. Agencies should assume responsibility for notifying employees of leave balances at least once each year.

(b) Agencies must retain sick leave records for all separated employees for a period of at least

four five years from the date of separation.

Statutory Authority G.S. 126-4.

.0317 DEFINITIONS

For purposes of this Section, immediate family is defined as:

- (1) spouse - a husband or wife;
- (2) parent;
 - (a) a biological or adoptive parent; or
 - (b) an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child; or
 - (c) a step-parent; or
 - (d) in-law relationships;
- (3) child - a son or daughter who is:
 - (a) a biological child; or
 - (b) an adopted child; or
 - (c) a foster child (a child for whom the employee performs the duties of a parent as if it were the employee's child); or
 - (d) step-child (a child of the employee's spouse from a former marriage); or
 - (e) a legal ward (a minor child placed by the court under the care of a guardian); or
 - (f) a child of an employee standing in loco parentis; or
 - (g) in-law relationships;
- (4) sister or brother - biological, adoptive (including step-, half- or in-law relationships);
- (5) grandparents, great grandparents, grandchildren, great grandchildren (including step relationships);
- (6) other dependents living in the employee's household.

Statutory Authority G.S. 126-4.

SECTION .1300 - VOLUNTARY SHARED LEAVE PROGRAM

.1302 POLICY

(a) In cases of a prolonged medical condition an employee may apply for or be nominated to become a recipient of leave transferred from the vacation leave account of another employee within their agency or from the sick leave or vacation account of an immediate family member in any agency. For purposes of this Rule, medical condition means medical condition of an employee or their spouse, parents, children, or other

dependents (including step and in-law relationships) a family member (spouse, parents, children (including step relationships) or other dependents living in the employee's household) of such employee that is likely to require an employee's absence from duty for a prolonged period, generally considered to be at least 20 consecutive workdays. If an employee has had previous random absences for the same condition that has caused excessive absences, or if the employee has had a previous, but different, prolonged medical condition within the last 12 months, the agency may make an exception to the 20 day period ~~may be made~~. The intent of this Rule is to allow one employee to assist another in case of a prolonged medical condition, that results in exhaustion of all earned leave.

(b) An employee who has a medical condition and who receives benefits from the Disability Income Plan of North Carolina (DIPNC) is not eligible to participate in the shared leave program. Shared leave, however, may be used during the required waiting period and following the waiting period provided DIPNC benefits have not begun.

(c) Participation in this program is limited to 1,040 hours, (prorated for part-time employees), either continuously or, if for the same condition, on a recurring basis. However, management may grant employees continuation in the program, month by month, for a maximum of 2,080 hours, if management would have otherwise granted leave without pay.

(d) An employee on workers' compensation leave who is drawing temporary total disability compensation may be eligible to participate in this program. Use of donated leave under the workers' compensation program would be limited to use with the supplemental leave schedule published by the Office of State Personnel.

(e) Subject to the maximum of 1,040 hours, the number of hours of leave an employee can receive is equal to the projected recovery or treatment period, less the employee's combined vacation and sick leave balance as of the beginning of the recovery or treatment period. The employee must exhaust all available leave before using donated leave.

(f) Nonqualifying conditions: This leave does not apply to short-term or sporadic conditions or illnesses that are common, expected or anticipated. This would include such things as sporadic, short-term recurrences of chronic allergies or conditions; short-term absences due to contagious diseases; or short-term, recurring medical or therapeutic treatments. These examples are

illustrative, not all inclusive. Each case must be examined and decided based on its conformity to the intent of this Rule and must be applied consistently and equitably.

Statutory Authority G.S. 126-4.

.1303 ADMINISTRATION

All departments and universities shall develop policies and procedures to implement this program. If an agency's policy includes employees exempt from the State Personnel Act who are in leave earning and reporting positions, leave may be shared between subject and exempt employees. This Section does not apply to local government, community colleges or public schools. When implemented by a department or university, this program shall be administered by and within the parent department or university of the recipient employee subject to the availability of funds and under the conditions set out in 25 NCAC 1E .1304, .1305, .1306 and .1307.

Statutory Authority G.S. 126-4.

.1304 QUALIFYING TO PARTICIPATE IN VOLUNTARY SHARED LEAVE PROGRAM

In order to participate in the Voluntary Shared Leave Program, an employee must meet the following conditions:

- (1) Employee must be a full-time or part-time (half-time or more) employee with a permanent, probationary, or trainee or time-limited appointment status. (The limitation and leave balance for permanent part-time employees is prorated.) Participation in this program shall be based on the employee's past compliance with leave rules.
- (2) By letter of application to the agency head, recipient shall apply, or be nominated by a fellow employee to participate in the program. A prospective recipient may make application for voluntary shared leave at such time as medical evidence is available to support the need for leave beyond the employee's available accumulated leave. The agency may establish internal guidelines to facilitate the administration of this process.
- (3) Application for participation would include name, social security number, classification, parent agency, jurisdiction

from which donations of leave would be requested, description of the medical condition and estimated length of time needed to participate in the program. A doctor's statement must be attached to the application. The Privacy Act makes medical information confidential. When disclosing information on an approved recipient, only a statement that the recipient has a prolonged medical condition (or the family member) needs to be made, therefore, prior to making If the employee's employee wishes to make the medical status public for purpose of receiving shared leave, employees must sign a release to allow the status to be known.

- (4) The parent department or university shall review the merits of the request and approve or disapprove. Agency heads may ~~these~~ choose to delegate the responsibility for reviewing the validity of requests to an existing peer group or establish a committee for this purpose. Such a committee may also be used in an advisory capacity to the agency head.
- (5) Establishment of a leave "bank" for use by unnamed employees is expressly prohibited. Leave must be donated on a one-to-one personal basis.
- (6) An agency with less than 200 employees may, with concurrence of another agency and with prior approval of the State Personnel Director, establish agreements with another small agency(ies) to be treated as one agency for purposes of this policy.

Statutory Authority G.S. 126-4.

.1305 DONOR GUIDELINES

(a) A non-family member donor may contribute only vacation leave to another employee within the same department or university. A non-family donor may not contribute leave outside the parent agency. A family member who is a state employee may contribute vacation or sick leave to another immediate family member state employee in any department or university. ~~Sick leave may also be transferred to an immediate family member in any department or university if the family member is a spouse, parent, child (including step relationships) or other dependent living in the employee's household. For transfer of vacation leave to an immediate family member, immediate~~

Immediate family is defined as spouse, parents, children, brother, sister, grandparents, ~~and~~ grandchildren, great grandparents and great grandchildren. Also included are the step, half, and in-law relationships. For detailed definitions of immediate family see 25 NCAC 1E .0317 DEFINITIONS.

(b) Minimum amount to be donated is four hours. An employee family member donating sick leave to a qualified family member under this program may donate up to a maximum of 1040 hours but may not reduce the sick leave account below 40 hours.

(c) The maximum amount of vacation leave allowed to be donated by one individual is to be no more than the amount of the individual's annual accrual rate. However, the amount donated is not to reduce the donor's vacation leave balance below one-half of the annual vacation leave accrual rate.

~~(d) Leave donated to a recipient's leave account is exempt from the maximum accumulation carry-over restrictions at calendar year end.~~

~~(d)~~ ~~(e)~~ An employee may not directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using annual leave under this program. Such action by an employee shall be grounds for disciplinary action up to and including dismissal on the basis of personal conduct. Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave. The employee donating leave cannot receive remuneration for the leave donated.

Statutory Authority G.S. 126-4.

.1306 LEAVE ACCOUNTING PROCEDURES

The following conditions shall control the accounting and usage procedures for leave donations in this program:

- (1) To facilitate the administration of the program, the agency may establish a specific time period during which leave can be donated.
- (2) Each agency shall establish a system of leave accountability which will accurately record leave donations and recipients' use. Such accounts shall provide a clear and accurate record for financial and management audit purposes.
- (3) ~~Withdrawals from recipient's leave~~

~~account will be charged to the recipient's account according to usual leave policies. All leave donated shall be credited to the recipient's sick leave account. Voluntary shared leave available in the recipient's sick leave account will be charged according to 25 NCAC 1E .0300 SICK LEAVE.~~

- (4) Leave transferred under this program will be available for use on a current basis or may be retroactive for up to 30 calendar days to substitute for leave without pay or advanced vacation or sick leave already granted to the leave recipient.
- (5) At the expiration of the medical condition, as determined by the agency, any unused leave in the recipient's donated leave account shall be treated as follows:
 - (a) The recipient's vacation and sick leave account balance shall not exceed a combined total of 40 hours (prorated for part-time employees).
 - (b) Any additional unused donated leave will be returned to the donor(s) on a pro rata basis and credited to the leave account from which it was donated. Fraction(s) of one hour shall not be returned to an individual donor.
 - (c) Each approved medical condition shall stand alone and donated leave not used for each approved incident shall be returned to the donor(s). Returned leave shall be credited to the same account from which it originally came. Employees who donate "excess" vacation leave (any amount above the 240 maximum allowable carryover) at the end of December may not have it returned and converted to sick leave.
- (6) If a recipient separates due to resignation, death, or retirement from state government, participation in the program ends. Donated leave shall be returned to the donor(s) on a pro rata basis.

Statutory Authority G.S. 126-4.

**SUBCHAPTER 1N - STATE
EMPLOYEES WORKPLACE
REQUIREMENTS PROGRAM
FOR SAFETY AND HEALTH**

**SECTION .0200 - PERSONAL
PROTECTIVE EQUIPMENT**

.0201 PURPOSE

(a) The North Carolina Occupational Safety and Health Act of 1973 was enacted to assure so far as possible every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources.

(b) North Carolina's OSHA bill which specifies all the occupational safety and health standards promulgated under the Federal Standard, Subpart-I-Personal Protective Equipment, was adopted in North Carolina, effective November 1, 1994.

Statutory Authority G.S. 126-4.

.0202 APPLICATION

Protective equipment, including personal protective equipment for eyes, face, head and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

Statutory Authority G.S. 126-4.

.0203 EQUIPMENT

(a) Employer provided equipment - It is the responsibility of the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the jobsite or use off the job.

(b) Employee-owned equipment - Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

(c) Design - All personal protective equipment shall be of safe design and constructed for the work to be performed. Defective or damaged personal protective equipment shall not be used.

Statutory Authority G.S. 126-4.

**.0204 HAZARD ASSESSMENT AND
EQUIPMENT SELECTION**

(a) The employer shall assess the workplace to determine if hazards are present, or likely to be present, and will necessitate the use of personal protective equipment. If such hazards are present, or likely to be present, the employer shall:

- (1) select and have each affected employee use the types of personal protective equipment that will protect the affected employee from the hazards identified in the hazard assessment;
- (2) communicate selection decisions to each employee; and
- (3) select personal protective equipment that properly fits each affected employee.

(b) The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated, the person certifying that the evaluation has been performed, the dates of the hazard assessment, and which identifies the document as a certification of hazard assessment.

Statutory Authority G.S. 126-4.

.0205 TRAINING

(a) The employer shall provide training to each employee who is required to use personal protective equipment. Each employee shall be trained to know at least the following:

- (1) when personal protective equipment is necessary;
- (2) what personal protective equipment is necessary;
- (3) how to properly don, doff, adjust, and wear personal protective equipment;
- (4) the limitations of the personal protective equipment;
- (5) the proper care, maintenance, useful life and disposal of the personal protective equipment.

(b) Each affected employee shall demonstrate an understanding of the training and the ability to use personal protective equipment properly, before being allowed to perform work requiring the use of personal protective equipment.

(c) When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required, the employer shall retrain each such employee. Circumstances where retraining is required, include but are not limited to the following situations:

- (1) changes in the workplace, rendering previous training obsolete;
- (2) changes in the type of personal protective equipment to be used, rendering previous training obsolete;
- (3) inadequacies in an affected employee's knowledge or use of assigned personal

protective equipment indicates that the employee has not retained the requisite understanding or skill.

(d) The employer shall verify that each affected employee has received and understood the required training through a written certification that contains the name of each trained employee, the dates of training, and that identifies the subject of the certification.

Statutory Authority G.S. 126-4.

.0206 GENERAL PERSONAL PROTECTIVE EQUIPMENT GUIDE

The State as an employer will furnish, at no cost to the employee, certain personal protective equipment required by the job. Included as part of this policy is the "General Personal Protective Equipment Guide" as established by the North Carolina Department of Labor. The State's policy in providing this equipment is noted in each category of this Rule:

EQUIPMENT	GUIDE
1. <u>Eye Protection</u>	
a. <u>Safety Glasses - 100% State Funded except that employees who wear prescription glasses pay for the cost of the examination.</u>	As required to protect employee from eye hazards, such as, optical radiation or glare when only frontal protection is required. Shaded or special purpose lenses may be required.
b. <u>Safety Glasses with Side Shields - 100% State Funded except that employees who wear prescription glasses pay for the cost of the examination.</u>	As required to protect employees from flying fragments, objects, large chips, particles, sand, dirt, etc. For severe exposure, add face-shield over safety glasses.
c. <u>Goggles - 100% State Funded - Chemical/Dust Nuisance</u>	As required to protect employees from chemical splashes, mist, sprays or nuisance dust. For severe exposure, add face-shield over goggles.
- <u>Welding Goggles - Indirect Ventilation</u>	As required to protect employees against eye hazards of welding, cutting, and brazing operations.
- <u>Cup Goggles - Direct Ventilation</u>	As required to protect employee against eye hazards.
- <u>Cup Goggles - Indirect Ventilation</u>	As required to protect employee against eye hazards.
2. <u>Welding Helmet - 100% State Funded</u>	As required to protect employee against eye hazards of welding, cutting, and brazing operations.
3. <u>Face Shield - 100% State Funded</u>	As required to protect employee's eyes and face.
4. <u>Hard Hat - 100% State Funded</u>	As required to protect employee's head against impact and falling or flying objects. Class A - used in construction and general industry where there is no exposure to high voltage, electrical shock or burns. Class B - use to protect the head against high voltage electricity. Reference: ANSI-Z89.1 - 1986.
5. <u>Hard Hat Liners - 100% State Funded</u>	As required to protect employee against the cold weather if hard hat is worn.
6. <u>Respirators - 100% State Funded</u>	As required to protect employee from airborne contaminants.
7. <u>Gloves - 100% State Funded</u>	As required to protect employee from physical, biological, chemical, radiation, or electrical hazards. Gloves used for electrical protection must be marked as to class of equipment and whether or not they are ozone-resistant, and shall meet the (ASTM) D 120-87 Specification for Rubber Insulating Gloves.
8. <u>Coveralls or Apron</u>	

- | | |
|---|--|
| <p>a. <u>Canvas - 100% State Funded</u></p> <p>b. <u>Non-Porous (Plastic/rubber) - 100% State Funded</u></p> <p>c. <u>Leather or Other Flame-Resistant Material - 100% State Funded</u></p> <p>9. <u>Body Protection - 100% State Funded</u></p> <p><u>Personal protective footies, vests, aprons, coats, pants, coveralls and suits in a range of suitable materials and sizes.</u></p> <p>10. <u>Foot protection</u></p> <p> a. <u>*Safety Shoe - State funds one pair per year, cost not to exceed dollar amount established biennially by the Office of State Budget and Management, which includes inflationary cost increase. Employee may purchase and be reimbursed on Form BD-403 or agency may supply under the rules and regulations of State Purchase and Contract Division</u></p> <p> b. <u>*Rubber and Specialized Safety Boots - 100% State Funded</u></p> <p>11. <u>Safety Belts, Harnesses and Life Lines -</u></p> <p>12. <u>Safety Nets - 100% State Funded</u>
 <u>Fall Arrest Safety System</u></p> <p>13. <u>Ear Protection - 100% State Funded</u></p> <p>14. <u>Life Ring - 100% State Funded</u></p> | <p><u>As required to protect employee from contact with hazardous substances when canvas provides adequate protection.</u></p> <p><u>As required to protect employee from contact with hazardous substance when plastic or rubber is needed to provide adequate protection.</u></p> <p><u>As required to protect employee from hazardous substances when leather is needed to provide adequate protection and when leather or other flame-resistant materials is required to protect employee from fire hazards.</u></p> <p><u>As required to protect employee against biological, radiation, physical, or chemical hazards. Base selection on information in the workplace hazards control program. Reference: Appropriate OSHA-NC standard(s) on purchase request.</u></p> <p><u>As required to protect employee working in areas where there is a danger of foot injuries due to falling or rolling objects or objects piercing the sole or where protection is needed against electrical hazards. As required to protect employees from solid objects weighing 15 lb. or greater that (1) are handled routinely each work period (more than once per eight hours) by the employee or other employees, or (2) can fall on the exposed employee's toes from a height exceeding one foot. In general, does not apply to office employees.</u></p> <p><u>NOTE: Protective footwear purchased shall comply with ANSI-Z41-1991, "American National Standard for Personal Protection - Protective Footwear".</u></p> <p><u>As required to keep employee's feet dry when employee routinely works in wet locations such as flooded ditches and to protect from electrical hazards or other hazards requiring specialized safety boots.</u></p> <p><u>As required to protect employees from 100% State Funded falling while working at elevated (10 feet or greater) locations not protected by standard guardrails or safety nets or as required when working in confined spaces.</u></p> <p><u>As required to protect employees working over 25 feet above ground or water surface where other protective devices are impractical and conventional fall protection system cannot practically be made use of.</u></p> <p><u>As required to protect employee against hearing loss due to noise.</u></p> <p><u>As required to protect employee</u></p> |
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15. Life Jacket (flotation vest) - 100% State
 or Funded

from drowning.

As required for employees working over
near water where the danger of drowning
exists.

Statutory Authority G.S. 126-4.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

AGRICULTURE

Plant Industry

2 NCAC 48D .0003 - Labeling
Rule Withdrawn by Agency

02/16/95

COMMERCE

Community Assistance

4 NCAC 19L .0407 - General Application Requirements
Agency Revised Rule

RRC Objection 02/16/95

Obj. Removed 02/16/95

CORRECTION

Division of Prisons

5 NCAC 2B .0111 - Good Time
Agency Revised Rule

RRC Objection 01/19/95

Obj. Removed 01/19/95

5 NCAC 2B .0112 - Gain Time
Agency Revised Rule

RRC Objection 01/19/95

Obj. Removed 01/19/95

5 NCAC 2B .0113 - Earned Time
Agency Revised Rule

RRC Objection 01/19/95

Obj. Removed 01/19/95

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Health

15A NCAC 18A .2801 - Definitions
Rule Approved as Written

RRC Objection 01/19/95

Obj. Removed 02/16/95

15A NCAC 18A .2810 - Specifications for Kitchens, Based on Number/Children
Agency Revised Rule

RRC Objection 01/19/95

Obj. Removed 02/16/95

Environmental Management

15A NCAC 2Q .0112 - Applications Requiring Professional Engineer Seal
No Response from Agency
Rule Returned to Agency
Agency Filed Rule for Codification Over RRC Objection

RRC Objection 11/17/94

Obj. Cont'd 12/15/94

Obj. Cont'd 01/19/95

Eff. 02/01/95

General Procedures for Public Health Programs

15A NCAC 24A .0404 - Reimbursement for Services Not Covered by Medicaid
RRC Approved Motion to Reconsider
Rule Returned to Agency
Agency Filed Rule for Codification Over RRC Objection

RRC Objection 12/15/94

Obj. Cont'd 12/15/94

Obj. Cont'd 01/19/95

Eff. 02/01/95

Marine Fisheries

<i>15A NCAC 3I .0017 - Fishery Resource Grant Program</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>15A NCAC 3O .0304 - Consideration of Appeal Petitions</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

Wildlife Resources and Water Safety

<i>15A NCAC 10G .0206 - Authority of Boat Registration Agents</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

HUMAN RESOURCES

Facility Services

<i>10 NCAC 3H .0221 - Administrative Penalty Determination Process</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>10 NCAC 3T .0102 - Definitions</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>10 NCAC 3T .1109 - Resident Care Areas</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

Individual and Family Support

<i>10 NCAC 42C .3601 - Administrative Penalty Determination Process</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

Medical Assistance

<i>10 NCAC 26H .0211 - DRG Rate Setting Methodology</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/16/95</i>
<i>10 NCAC 26H .0212 - Exceptions to DRG Reimbursement</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>10 NCAC 26H .0216 - Cost Reporting and Audits</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

INSURANCE

Actuarial Services Division

<i>11 NCAC 16 .0705 - Claim Reserve Methodology and Actuarial Certification</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>

Agent Services Division

<i>11 NCAC 6A .0801 - Definitions</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>11 NCAC 6A .0805 - Calculation of 1CECs</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>11 NCAC 6A .0808 - Instructor Qualification</i>		
<i>Rule Withdrawn by Agency</i>		<i>01/19/95</i>
<i>11 NCAC 6A .0809 - Approval of Courses</i>		
<i>Rule Withdrawn by Agency</i>		<i>01/19/95</i>
<i>11 NCAC 6A .0811 - Sanctions for Noncompliance</i>		

Rule Withdrawn by Agency

01/19/95

LABOR

Private Personnel Services

13 NCAC 17 .0102 - *Licensing Procedures*

RRC Objection 01/19/95

Agency Revised Rule

Obj. Removed 01/19/95

13 NCAC 17 .0105 - *Fee Reimbursement*

Rule Withdrawn by Agency

01/19/95

LICENSING BOARDS AND COMMISSIONS

Board of Dietetics/Nutrition

21 NCAC 17 .0113 - *Fees*

RRC Objection 01/19/95

Agency Revised Rule

Obj. Removed 01/19/95

21 NCAC 17 .0201 - *Definitions*

RRC Objection 01/19/95

Agency Revised Rule

Obj. Removed 01/19/95

21 NCAC 17 .0202 - *Requirement for Review*

RRC Objection 01/19/95

Agency Revised Rule

Obj. Removed 01/19/95

21 NCAC 17 .0203 - *Review and Board Action*

RRC Objection 01/19/95

Agency Revised Rule

Obj. Removed 01/19/95

Board of Examiners of Electrical Contractors

21 NCAC 18B .0901 - *Applicants Convicted of Crimes*

RRC Objection 01/19/95

No Response from Agency

Obj. Cont'd 02/16/95

Board of Electrolysis Examiners

21 NCAC 19 .0203 - *Application/Renewal, Reinstatement/Reactivation/License*

RRC Objection 02/16/95

Agency Revised Rule

Obj. Removed 02/16/95

21 NCAC 19 .0704 - *Time Limits on Credit*

RRC Objection 02/16/95

Agency Revised Rule

Obj. Removed 02/16/95

Board of Opticians

21 NCAC 40 .0314 - *Apprenticeship and Internship Requirements; Registration*

RRC Objection 11/17/94

Agency Revised Rule

Obj. Cont'd 11/17/94

No Response from Agency

Obj. Cont'd 12/15/94

Agency Responded

Obj. Cont'd 01/19/95

No Response from Agency

Obj. Cont'd 02/16/95

PUBLIC EDUCATION

Elementary and Secondary Education

16 NCAC 6C .0207 - *Prospective Teacher Scholarship Loans*

RRC Objection 02/16/95

SECRETARY OF STATE

Notary Public Division

18 NCAC 7 .0301 - *Approved Course of Study*

RRC Objection 12/15/94

RRC OBJECTIONS

<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>01/19/95</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>02/16/95</i>
<i>18 NCAC 7 .0302 - Instructors</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>01/19/95</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd</i>	<i>02/16/95</i>

TRANSPORTATION

Division of Highways

<i>19A NCAC 2D .0825 - Confidentiality of Cost Estimates and Plan Holder Lists</i>	<i>RRC Objection</i>	<i>01/19/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/19/95</i>
<i>19A NCAC 2E .1001 - Definitions</i>	<i>RRC Objection</i>	<i>02/16/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/16/95</i>
<i>19A NCAC 2E .1005 - Designation Process</i>	<i>RRC Objection</i>	<i>02/16/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/16/95</i>
<i>19A NCAC 2E .1007 - Removal Process</i>	<i>RRC Objection</i>	<i>02/16/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/16/95</i>

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
<i>Division of Purchase and Contract</i>				
Carolina Tel. & Telegraph Co. v. Admin., Div of Purchase & Contract	94 DOA 0516	Morrison	01/21/95	9:22 NCR 1943
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Jerry Lee McGowan v. Alcoholic Beverage Control Comm.	93 ABC 0363	Morrison	08/23/94	
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Alcoholic Beverage Control Comm. v. Daehae Chang	93 ABC 0775	Morrison	09/21/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Lynn Ann Garfagna v. Alcoholic Beverage Control Commission	93 ABC 1481	Gray	07/19/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
Alcoholic Beverage Control Comm. v. Tilghman's of Topsail, Inc.	94 ABC 0057	Chess	12/09/94	
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94	
Alcoholic Beverage Control Comm. v. Mitch's Tavern, Inc.	94 ABC 0064	Gray	07/26/94	
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94	
Alcoholic Beverage Control Comm. v. Richard Wayne Barrow	94 ABC 0079	Gray	10/14/94	
Alcoholic Beverage Control Comm. v. Suhhashbai C. Patel	94 ABC 0083	West	11/01/94	
Alcoholic Beverage Control Comm. v. Daphne Ann Harrell	94 ABC 0115	Nesnow	07/18/94	
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94	
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94	
Lawrence Mungin v. Alcoholic Beverage Control Commission	94 ABC 0149	Chess	08/08/94	
Willie Poole Jr. v. Alcoholic Beverage Control Commission	94 ABC 0232	Chess	09/02/94	
Alonza Mitchell v. Alcoholic Beverage Control Commission	94 ABC 0257	Morrison	07/28/94	9:11 NCR 870
Roy Dale Cagle v. Alcoholic Beverage Control Commission	94 ABC 0260	West	07/13/94	
Aytes Investments, Inc. v. ABC Comm. and Ripley Hotch, et. al.	94 ABC 0291	West	01/25/95	
Christopher C. Gause, James A Jinwright v. Alcoholic Bev. Ctl. Comm.	94 ABC 0532	Gray	09/27/94	
Rajaddin Abdelaziz v. Alcoholic Beverage Control Commission	94 ABC 0600	Chess	09/22/94	
Alcoholic Beverage Control Comm. v. Sherrie Rena Quick	94 ABC 0717	Gray	12/16/94	
Carol Hewitt v. Alcoholic Beverage Control Commission	94 ABC 0804	Gray	01/04/95	
Alcoholic Bev. Ctl. Comm. v. Partnership, T/A Price Downs Food Mart	94 ABC 0856	West	11/22/94	
Alcoholic Beverage Control Comm. v. Sheila Charlesine Hildebrand	94 ABC 0909	Becton	01/10/95	
Alcoholic Beverage Control Comm. v. James Earl Mullins, Sr.	94 ABC 0934	West	12/05/94	
Alcoholic Beverage Control Comm. v. Saleh Ahmed Fadah	94 ABC 0952	Mann	02/06/95	
Alcoholic Beverage Control Comm. v. Daniel Thomas Franklin	94 ABC 1059	Gray	02/10/95	

COMMERCE

Savings Institutions Division

James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94
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CORRECTION				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
CRIME CONTROL AND PUBLIC SAFETY				
Joseph Guernsey & Parents, Robert Guernsey & Dolores Guernsey v. Pitt County Hospital Eastern Radiologists	94 CPS 0413	Gray	07/11/94	
<i>Crime Victims Compensation Commission</i>				
Mac H. McMillan v. Crime Victims Compensation Commission	92 CPS 1328	Morgan	08/11/94	
James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Rose T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Karen C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407
Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
Violet E. Kline v. Crime Victims Compensation Commission	93 CPS 1670	Morgan	06/13/94	
Jacqueline Shepard v. Victims Compensation Commission	93 CPS 1720	Chess	12/06/94	
James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
J. Richard Spencer v. Crime Victims Compensation Commission	94 CPS 0157	Chess	06/14/94	
Albert H. Walker v. Crime Victims Compensation Commission	94 CPS 0229	Reilly	08/11/94	
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Ada Battle v. Crime Victims Compensation Commission	94 CPS 0414	Reilly	08/23/94	
Lyman L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	
Blanche J. Taylor v. William Hooks Jr., Crime Victims Comp. Comm.	94 CPS 0464	Mann	10/28/94	
Michelle L. Wilcox v. Crime Victims Compensation Commission	94 CPS 0467	Reilly	06/07/94	
Charlie E. McDonald v. Crime Victims Compensation Commission	94 CPS 0468	Gray	09/02/94	9:13 NCR 1056
Lillie Alford/behalf/estate/Venise Alford v. Crime Victims Comp. Comm.	94 CPS 0488	West	11/10/94	
Michael G. Low v. Crime Victims Compensation Commission	94 CPS 0524	Morrison	06/13/94	
Torbit Smith v. Victims Compensation Commission	94 CPS 0535	Becton	10/26/94	
Maureen P. Wilson v. Crime Victims Compensation Commission	94 CPS 0567	Gray	09/23/94	
Kay Thompson Chambers v. Crime Victims Compensation Commission	94 CPS 0581	Morrison	09/28/94	
James R. Gray v. Crime Victims Compensation Commission	94 CPS 0603	Reilly	08/19/94	
Hazel Jarvis v. Victims Compensation Commission	94 CPS 0664	Chess	07/29/94	
Pattie Hale v. Victims Compensation Fund	94 CPS 0734	West	09/06/94	
Dana Harris v. Crime Victims Compensation Commission	94 CPS 0832	Nesnow	09/26/94	
Dorian Walter St. Patrick Scott v. Victims Compensation Comm.	94 CPS 0883	Nesnow	10/04/94	
Timothy W. Grant v. Crime Victims Compensation Commission	94 CPS 0904	Gray	01/24/95	
Marvin C. Barnes v. Crime Victims Compensation Commission	94 CPS 0922	Mann	01/30/95	
Susan Cooley v. Crime Victims Compensation Commission	94 CPS 1004	Gray	12/27/94	
In the Matter of the Claim of Claimant: Shirley Robinson Victim: Dandre J. Lamont Offender Charles Fernandez v. Crime Victims Compensation Comm.	94 CPS 1070	Nesnow	12/12/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
Melissa C. Speer v. Crime Con. & Public Safety, Victims Comp. Comm.	94 CPS 1523	Nesnow	02/15/95	
Susan Wade v. Victims Compensation Commission	94 CPS 1685	Morrison	02/01/95	
Donna C. Garrison v. Crime Victims Compensation Commission	94 CPS 1690	Reilly	01/18/95	
Ray C. Jacobs v. Crime Control & Public Safety	94 CPS 1735	Chess	01/31/95	
EMPLOYMENT SECURITY COMMISSION				
David Lee Bush v. Employment Security Commission	91 ESC 0395	Reilly	08/18/94	
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Bobby Stallings v. Environment, Health, and Natural Resources	90 EHR 0612	Morgan	08/11/94	
James M. Lyles v. Brunswick County Office of Permits	92 EHR 0333	Chess	09/22/94	

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Erby Lamar Grainger v. Environment, Health, & Natural Resources	93 EHR 0071	Reilly	11/22/94	
William P. Shaver, R. McKinnon Morrison III, Jill Ray, Dr. Wesley C. Ray, Douglas W. Furr, Catherine H. Furr & Caldwell Creek Farm, Inc. v. EHNR-State of North Carolina	93 EHR 0452	Morgan	08/11/94	
Ron D. Graham, Suzanne C. Graham v. Robert Cobb, Mecklenburg Cty	93 EHR 1017	Becton	05/31/94	
Robert, Stephanie & Joshua Campbell v. EHNR; Child. Spcl Hlth Svcs	93 EHR 1019	Becton	12/28/94	9:20 NCR 1688
Carnel D. Pearson Jr. v. Craven Co. Division of Health & DEHNR	93 EHR 1759	Mann	09/06/94	
Patricia D. Solomon v. Macon County Health Department	93 EHR 1777	West	05/23/94	
Elbert L. Winslow v. EHNR/Guilford Cty Health Dept. & Guilford Cty Planning & Zoning Board	94 EHR 0086	Chess	07/13/94	
Kathryn A. Whitley v. Macon County Health Department	94 EHR 0088	West	07/13/94	
Brook Hollow Estates v. Environment, Health, & Natural Resources	94 EHR 0093	West	06/03/94	
Laney Oil Company, Inc. v. Environment, Health, & Natural Resources	94 EHR 0098	Nesnow	01/13/95	
Bobby Combs v. Public Water Supply Section	94 EHR 0202	West	10/19/94	
Oceanfront Court, David C. Gagnon v. Environment, Health, & Nat. Res.	94 EHR 0210	Chess	06/21/94	
Scotland Water Co. v. Environment, Health, & Natural Resources	94 EHR 0239	Morrison	01/31/95	
Sam's Club #8219 v. Mecklenburg County Health Department	94 EHR 0329	Nesnow	06/15/94	9:7 NCR 496
Everhart & Associates., Inc. and Hettie Tolson Johnson v. Environment, Health, and Natural Resources and Zelig Robinson	94 EHR 0392	Reilly	10/18/94	9:15 NCR 1231
Richard A. Jenkins v. NC Water Pollution Ctl. Sys. Op. Cert. Comm.	94 EHR 0424	West	10/11/94	
Eugene Crawford & Nancy P. Crawford v. Macon County Health Dept.	94 EHR 0500	Gray	06/10/94	
Joseph B. Leggett v. Environment, Health, & Natural Resources	94 EHR 0560	West	09/21/94	
Tri-Circuits, Inc. v. Environment, Health, & Natural Resources	94 EHR 0601	Morrison	06/30/94	
Thomas Taylor Fain v. Martin-Tyrrell-Wash. Dist. Health Dept., EHNR	94 EHR 0736	West	11/22/94	
Marlen C. Robb, Jr. v. CAMA, Washington, NC EHNR	94 EHR 0767	West	11/22/94	
Irene, Will, Eric Litaker v. Montgomery County Health Department	94 EHR 0776	Gray	09/06/94	
James Loder v. New Hanover Inspection Svcs., Local CAMA Permit Off.	94 EHR 0821	Chess	11/21/94	
H. W. Golding v. Environment, Health, & Natural Resources	94 EHR 0913	Reilly	01/23/95	
National Food Market v. Environment, Health, and Natural Resources	94 EHR 0998	Reilly	12/19/94	
Edna M. Blake v. EHNR and Onslow County Health Department	94 EHR 1035	Becton	02/10/95	9:23 NCR 2060
Harvey Ted Hemilright, Wendy Leigh Hemilright v. EHNR	94 EHR 1402	Reilly	02/09/95	
Lee E. Harrell v. Environment, Health, & Natural Resources	94 EHR 1663	Reilly	02/09/95	
Conbraco Industries, Inc. v. Environment, Health, & Natural Resources	94 EHR 1686	Reilly	02/14/95	
Briarcliffe Partnership, Barry R. Sidden v. Env., Health, & Nat. Res.	94 EHR 1730	West	02/09/95	
Coastal Management				
Roger Fuller v. EHNR, Div. of Coastal Mgmt & Environmental Mgmt	89 EHR 1378*	Gray	04/07/94	
Roger Fuller v. EHNR, Div. of Coastal Mgmt & Environmental Mgmt	90 EHR 0017*	Gray	04/07/94	
John R. Hooper v. EHNR, Div./Coastal Mgmt & Bird's Nest Partnership	90 EHR 0455	Morgan	08/11/94	
Gary E. Montalbino v. Division of Coastal Management	93 EHR 1792	Nesnow	03/21/94	
Paley-Midgett Partnership v. Coastal Resources Commission	94 EHR 0315	Gray	06/01/94	
Craven County Health Department				
Cox Transport Equipment, Harvey A Cox v. County of Craven, EHNR	94 EHR 0487	West	11/01/94	
Environmental Health				
Jane C. O'Malley, Melvin L. Cartwright v. EHNR & District Hlth Dept Pasquotank-Perquimans-Camden-Chowan	91 EHR 0838	Becton	04/06/94	
Henry Lee Bulluck v. Nash County Health Department & EHNR	93 EHR 0348	Morgan	07/22/94	
Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
Richard F. Ebersold v. Jackson County Health Department & EHNR	93 EHR 1391	Chess	06/24/94	
Crab Shack Restaurant v. EHNR, Div. of Environmental Health	93 EHR 1609	Gray	12/27/94	
Sidney S. Tate Jr. v. Dept. of Environment, Health, & Natural Resources	94 EHR 0005	Reilly	05/24/94	
George A. Waugh, Shirley A. Waugh v. Carteret Cty Health & Env. Hlth	94 EHR 0128	Chess	07/13/94	
Scotland Water Co., Laurin Lakes v. Environment, Health, & Nat. Res.	94 EHR 0200	Nesnow	04/27/94	
H.A. Lentz v. Department of Environment, Health, & Natural Resources	94 EHR 0235	Nesnow	07/19/94	
Floyd Benn Williams v. Dept. of Environment, Health, & Nat. Res.	94 EHR 0333	Reilly	05/18/94	
Robert Leon Snipes v. Environmental Health, Hillsborough NC	94 EHR 0529	Morrison	01/04/95	
Ralston Pound, Jr. & Deanie S. Pound v. Carteret Cty. Env. Health Dept.	94 EHR 1003	Reilly	12/07/94	
James E. Taylor, Marjorie M. Taylor v. Environmental Health Division	94 EHR 1071	Reilly	02/15/95	

* Consolidated Cases.

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<i>Environmental Management</i>				
David Springer v. Dept. of Environment, Health, & Natural Resources	92 EHR 1797	Morgan	05/19/94	
Petroleum Installation Equipment Co., Inc. v. Env., Health & Nat. Res.	93 EHR 0531	Chess	03/21/94	
Raleigh-Durham Airport Authority v. EHNHR, Div of Env. Management	93 EHR 0684 ^{*1}	West	01/31/95	
Howell's Child Care Center, Inc. v. EHNHR, Div of Environmental Mgmt.	93 EHR 0955	West	11/02/94	
Spring Valley Meats, Inc. v. Environment, Health, & Natural Resources	93 EHR 0974	West	11/03/94	
Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	
Wooten Oil Company v. EHNHR, Div of Environmental Management	94 EHR 0001	West	09/30/94	
John G. Owens & J.B.S. Mechanical Svcs, Inc. v. EHNHR, Env. Mgmt.	94 EHR 0024	Mann	09/07/94	
Raleigh-Durham Airport Authority v. EHNHR, Div of Env. Management	94 EHR 0612 ^{*1}	West	01/31/95	
General Electric Co., Inc. v. EHNHR, Env. Mgmt. Comm. & City/Mebane	94 EHR 1031	Reilly	11/30/94	9:19 NCR 1595
<i>Land Resources</i>				
Wallace B. Clayton, Dr. Marshall Redding v. Div. of Land Resources	93 EHR 1407	Morgan	08/09/94	
Town of Kernersville (LQS 93-053) v. Environment, Health, & Nat. Res.	93 EHR 1781	Chess	06/29/94	9:8 NCR 581
Royce Perry, Paul Perry v. Dept. of Environment, Health, & Natural Res.	94 EHR 0525	Gray	07/01/94	
<i>Marine Fisheries</i>				
Robert I. Swinson, Virginia S. Swinson v. EHNHR, Div/Marine Fisheries	93 EHR 0394	Gray	04/11/94	
Larry J. Batson v. Division of Marine Fisheries	93 EHR 0857	Morgan	07/22/94	
David W. Oglesby v. Division of Marine Fisheries	93 EHR 0930 ^{*2}	West	07/25/94	9:10 NCR 758
David E. Oglesby v. Division of Marine Fisheries	93 EHR 0931 ^{*2}	West	07/25/94	9:10 NCR 758
James Goodman v. EHNHR, Division of Marine Fisheries	94 EHR 0035	Nesnow	07/18/94	9:9 NCR 660
Billy Ervin Burton v. Division of Marine Fisheries	94 EHR 0504	Nesnow	09/01/94	
<i>Maternal and Child Health</i>				
<i>WIC Section</i>				
Anthony Awueah v. EHNHR, Div. Maternal & Child Health, WIC Section	94 EHR 0718	Chess	09/23/94	
Orange Finer Food v. Environment, Health, and Natural Resources	94 EHR 0965	Reilly	12/19/94	
Salah Helu v. Environment, Health, and Natural Resources	94 EHR 0976	Reilly	12/20/94	
<i>Pender County Health Department</i>				
Milton Rudd v. Pender County Health Department	94 EHR 0874	Chess	01/26/95	
<i>Rockingham County Department of Public Health</i>				
David Martin Shelton v. Rockingham Dept. of Public Health and EHNHR	94 EHR 1316	West	02/09/95	
<i>Solid Waste Management</i>				
Roger Sessoms v. EHNHR/Asbestos Hazard Management Branch	93 EHR 0951	Gray	03/28/94	
Bertie Citizens Action Coalition, Inc.; Willard J. Oliver, Reginald Early, Herbert Jenkins, Jr., Lindwood Earl Tripp, Willie Warren Tripp, Mary Alice Cherry, and Kathy Burden v. EHNHR, Solid Waste Management Division, and East Carolina Environmental, Inc., Addington Environmental, Inc., et al.	93 EHR 1045	Morrison	04/06/94	9:3 NCR 214
Bobby Benton v. EHNHR & Division of Solid Waste	94 EHR 0442	Gray	08/22/94	
HUMAN RESOURCES				
Timothy Creed v. Montgomery Cty Dept. of Social Svcs.	94 CSE 1007	Chess	01/24/95	
Jerome Triplin v. Department of Human Resources	93 DHR 0108	Reilly	08/19/94	
Helen J. Walls, Walls Young World v. Department of Human Resources	93 DHR 0965	Morgan	08/11/94	
Brenda C. Robinson v. Department of Human Resources	94 DHR 0365	West	06/01/94	
Betty King v. Department of Human Resources	94 DHR 0439	Chess	12/15/94	
Betty Rhodes v. Department of Human Resources	94 DHR 0501	Morrison	06/02/94	
Mr. & Mrs. Richard Bullen v. Department of Human Resources	94 DHR 0811	Becton	11/14/94	
Bonnie Birchfield v. Mecklenburg D.S.S. Youth & Family Svcs.	94 DHR 1559	Gray	01/24/95	
<i>Distribution Child Support</i>				
Mona L. Stanback v. DHR, Div/Social Svcs, Child Support Enf. Section	93 DCS 0969	Morgan	08/02/94	

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Jachell D. Parker v. Department of Human Resources	93 DCS 0371	Morgan	07/14/94	
Earleen G. Tinsley v. Department of Human Resources	94 DCS 0651	Nesnow	09/15/94	
<i>Division of Child Development</i>				
Judith Fridley v. Div. of Child Development/Abuse/Neglect Unit	93 DHR 0973	Morrison	03/08/94	
DHR, Division of Child Development v. Joyce Gale	93 DHR 1344	Gray	04/28/94	
Laureen Holt, ID#26-0-00037 v. DHR, Div. of Child Development	93 DHR 1549	Becton	07/13/94	
Gloria C. Haith v. Department of Human Resources	93 DHR 1707	Nesnow	03/22/94	
Gloria C. Haith v. Daycare Consultant	93 DHR 1787	Nesnow	03/14/94	
Charles E. Smith v. Department of Human Resources	93 DHR 1797	Nesnow	03/21/94	
Scott's Loving Day Care & Nursery, Mrs. Willie L. Scott v. DHR	94 DHR 0106	Nesnow	06/29/94	
Belinda K. Mitchell v. Human Resources, Div. of Child Development	94 DHR 0119	Reilly	06/30/94	
Living Word Day Care, Jonathan Lankford v. Dept. of Human Resources	94 DHR 0168	Nesnow	03/23/94	
David G. Whitted, Pres., Toddlers Academy, Inc. v. Div of Child Dev.	94 DHR 0453	Mann	09/23/94	
Miriam C. Kircher v. Human Resources, Div. of Child Development	94 DHR 0615	Morrison	11/17/94	
Mary T. Hill v. Human Resources, Division of Child Development	94 DHR 0944	Chess	11/16/94	
<i>Facility Services</i>				
Laura Harvey Williams v. DHR, Division of Facility Services	93 DHR 0391	Morgan	08/11/94	
Presbyterian-Orthopaedic Hospital v. Department of Human Resources	93 DHR 0805	Reilly	03/11/94	
Judy Hoben Wallace v. Department of Human Resources	93 DHR 0935	Gray	05/23/94	
Lowell Stafford v. Department of Human Resources	93 DHR 1381	Gray	04/15/94	
Willie J. McCombs v. Human Resources, Div. of Facility Services	94 DHR 0430	Gray	09/29/94	
Mr. & Mrs. Alvin Wilson v. DHR, Division of Facility Services	94 DHR 0559	Chess	08/25/94	
Steve Alan Russell v. DHR, Div. of Facility Svcs, Emergency Med. Svcs	94 DHR 0830	Gray	11/28/94	
Bettie Graham v. Youth and Family Services, Charlotte, N.C.	94 DHR 1527	Gray	01/04/95	
<i>Certificate of Need Section</i>				
Charles E. Hunter, Jr., M.D. & Coastal Perfusion Svcs, Inc. v. Department of Human Resources, and Wilmington Perfusion Corp. and Howard F. Marks, Jr., M.D.	93 DHR 0746	Morgan	04/11/94	
Cape Fear Memorial Hospital v. Department of Human Resources	93 DHR 1552	Reilly	08/15/94	
Angel Community Hospital, Inc. v. DHR, Div. of Facility Svcs., Cert./ Need Section, and Brithaven, Inc., d/b/a Brithaven of Franklin	94 DHR 0146	West	10/21/94	
The Carrolton of Fayetteville, Inc. v. Department of Human Resources and	94 DHR 0197 ⁴⁵	Morgan	08/11/94	
Highland House of Fayetteville, Inc. & Richard R. Allen Sr. v. DHR The Carrolton of Fayetteville, Inc. v. Department of Human Resources and	94 DHR 0198 ⁴⁵	Morgan	08/11/94	
Highland House of Fayetteville, Inc. & Richard R. Allen Sr. v. DHR ABC Home Health Services, Inc. v. Human Resources, Div. of Facility Services, Certificate of Need Section v. Mecklenburg Home Health, Inc., d/b/a Home Health Professionals of Guilford	94 DHR 0254	Morrison	11/17/94	
Professional Nursing Services, Inc. and Betty Wallace v. Certificate of Need Section, Div. of Facility Services, Human Resources and	94 DHR 0609	West	11/21/94	
Duplin Home Care & Hospice, Inc.; Hometown Hospice, Inc.; Craven County Health Dept. Home Health-Hospice Agency; Hospice of Pamlico County, Inc.; Hospice of Carteret County; and Comprehensive Home Health Care I, Inc.				
<i>Licensure Section</i>				
Gary C. Griggs v. DHR, Div of Facility Services, Licensure Section	94 DHR 0517	Chess	12/01/94	
Rosemary Dupe Buckner Eregie v. DHR, Div of Facility Svcs., Lic. Sec.	94 DHR 0582	Morrison	02/06/95	
<i>Division of Medical Assistance</i>				
J.R., by and through her agent & Personal Rep., Hank Neal v. DHR	93 DHR 0528	Gray	04/27/94	
N.R. by & through her agt & personal rep E.C.J. v. DHR, Medical Assis.	93 DHR 0538	Chess	07/01/94	
David Yott v. Department of Human Resources	93 DHR 1113	Gray	04/05/94	
Iredell Memorial Hospital, Inc. v. DHR, Division of Medical Assistance	93 DHR 1248	Chess	01/09/95	
Sampson County Memorial Hospital v. DHR, Div of Medical Assistance	93 DHR 1760	West	09/07/94	
Division of Medical Assistance v. Catawba Cty Dept. of Social Services	93 DHR 1778	West	03/04/94	
Lu Ann Leidy, MD/Dorothea Dix Hosp. Child & Youth v. Medical Assis.	94 DHR 0448	Chess	06/21/94	

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<i>Division of Social Services</i>				
Evelyn Moore v. Department of Human Resources	94 DHR 0293	Reilly	04/15/94	
Nathaniel Harrell, Annie Harrell v. Department of Social Services	94 DHR 0440	Gray	06/27/94	
Betty Snipes v. Person County Department of Social Services	94 DHR 1061	Gray	12/16/94	
Robert and Carolyn McLean v. Guilford County Dept. of Social Services	94 DHR 1294	Becton	02/08/95	
<i>Child Support Enforcement Section</i>				
Alfred Bennett v. Department of Human Resources	90 CSE 1146	Morgan	08/11/94	
Shelton Staples v. Department of Human Resources	91 CSE 0660	Morgan	08/11/94	
Helen Lee Harvell Jones v. Department of Human Resources	91 CSE 1183	Morgan	08/11/94	
Dalton Felton Sr. v. Department of Human Resources	92 CSE 0532	Morgan	07/13/94	
Colby S. Hughes v. Department of Human Resources	92 CSE 1199	Morgan	08/10/94	
Gary Eugene Honeycutt v. Department of Human Resources	92 CSE 1207	Morgan	08/10/94	
Vicki C. Conn v. Department of Human Resources	92 CSE 1268	Morgan	08/10/94	
John R. Lossiah v. Department of Human Resources	92 CSE 1345	Mann	10/13/94	
Melvin L. Miller Sr. v. Department of Human Resources	92 CSE 1372	Morgan	08/10/94	
Robert L. Hicks v. Department of Human Resources	92 CSE 1591	Morgan	08/10/94	
Thomas Sadler v. Department of Human Resources	92 CSE 1739	Becton	10/18/94	
Nancy Richardson v. Department of Human Resources	93 CSE 0180	Chess	11/22/94	
Frederick C. Burdick Jr. v. Department of Human Resources	93 CSE 0227	Mann	11/09/94	
Darryl D. Leedy v. Department of Human Resources	93 CSE 0591	Morgan	08/11/94	
David M. Fogleman Jr. v. Department of Human Resources	93 CSE 1074	Mann	10/10/94	
William Heckstall v. Department of Human Resources	93 CSE 1077	Reilly	03/14/94	
Luther Hatcher v. Department of Human Resources	93 CSE 1082	Mann	05/24/94	
Bryan Jeffrey Cole v. Department of Human Resources	93 CSE 1091	Becton	03/30/94	
Anthony E. Bullard v. Department of Human Resources	93 CSE 1094	Nesnow	06/13/94	
Donald E. Height v. Department of Human Resources	93 CSE 1110	Morgan	08/11/94	
Dexter L. Chambers v. Department of Human Resources	93 CSE 1124	West	03/28/94	
Ronald E. Johnson v. Department of Human Resources	93 CSE 1125	Becton	03/30/94	
Roger Moore v. Department of Human Resources	93 CSE 1127	Becton	04/14/94	
Alvin Lee Martin v. Department of Human Resources	93 CSE 1128	Nesnow	04/04/94	
James J. Malloy v. Department of Human Resources	93 CSE 1132	Gray	10/03/94	
Robert Young v. Department of Human Resources	93 CSE 1133	Reilly	04/18/94	
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Adolphus Laing v. Department of Human Resources	94 CSE 1299	Mann	01/26/95	
Willie B. Walker Jr. v. Department of Human Resources	94 CSE 1306	Gray	02/06/95	
Curtis Smith Jr. v. Department of Human Resources	94 CSE 1337	Nesnow	02/02/95	
Robert L. Rochelle v. Department of Human Resources	94 CSE 1349	Gray	02/09/95	
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David C. Riddle v. Department of Human Resources	94 CSE 1367	Chess	01/12/95	
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Edward B. Stamey v. Department of Human Resources	94 CSE 1448	West	01/10/95	
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Gerald L. Generette v. Department of Human Resources	94 CSE 1469	Mann	01/26/95	
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Larry G. Guthrie v. Department of Human Resources	94 CSE 1540	Reilly	01/06/95	
Christopher D. Scott v. Department of Human Resources	94 CSE 1574	West	02/09/95	
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JUSTICE

Alarm Systems Licensing Board

Alarm Systems Licensing Board v. George P. Baker	93 DOJ 0457	Nesnow	03/10/94
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Christopher Pate v. Alarm Systems Licensing Board	94 DOJ 0710	Chess	09/12/94	
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Frankie L. McKoy v. Private Protective Services Board	94 DOJ 0706	Chess	09/09/94	
John F. Carmichael v. Private Protective Services Board	94 DOJ 0707	West	12/01/94	
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Steven W. Wray v. Sheriffs' Education & Training Standards Comm.	93 DOJ 1803	Chess	06/29/94	
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Gregory Blake Manning v. Criminal Justice Ed. & Training Sds. Comm.	94 DOJ 0048	Gray	03/29/94	
Russell Pinkelton Jr. v. Sheriffs' Education & Training Sds. Comm.	94 DOJ 0118	Gray	08/10/94	
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Christopher Murch as Guardian Ad Litem for Angela D. Murch, a Minor v. Barbara Richardson, Admin. Except. Child. Prog.; Craven Cty School Sys.; Bradford L. Sneed, Superintendent	93 EDC 0161	Mann	11/28/94	
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Mary Ann Sciullo & Frank Sciullo on behalf of their minor child, Samuel W. Sciullo v. State Board of Education	94 EDC 0044	Gray	07/22/94	
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Wayne Hogwood v. Department of Public Instruction	94 EDC 0653	West	10/20/94	9:16 NCR 1326
Norman Charles Creange v. State Bd. of Ed., Dept. of Public Instruction	94 EDC 0737	Morrison	11/04/94	
Donald L. Brickhouse v. Bertie County Schools	94 EDC 1176	Gray	01/25/95	
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Sandra Tatum v. Teachers & State Employees Comp Major Medical Plan	94 INS 0028	Gray	10/25/94	9:16 NCR 1331
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Delores Y. Bryant v. Department of Administration	94 OSP 0989	Gray	01/26/95	
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Linda D. Williams v. Agricultural and Technical State University	93 OSP 0089	Chess	03/23/94	
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<i>Department of Agriculture</i>				
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<i>NC School of the Arts</i>				
Rick McCullough v. Search Comm School/Dance, NC School of the Arts	94 OSP 0511	West	10/14/94	
<i>Butner Adolescent Treatment Center</i>				
Alvin Lamonte Breeden v. Butner Adolescent Treatment Center	94 OSP 0899	Nesnow	10/12/94	
<i>Catawba County</i>				
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<i>North Carolina Central University</i>				
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Delores Y. Bryant v. Department of Commerce	94 OSP 0983	Gray	02/01/95	
<i>Department of Correction</i>				
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Elroy Lewis v. North Central Area - Dept of Correction, Robert Lewis	92 OSP 1770	Becton	05/24/94	9:6 NCR 395
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Junius C. Page v. Dept. of Correction, Secy. Franklin Freeman	93 OSP 1794	Mann	07/08/94	
Grady Butler, Jr. v. Correction, Div./Prisons, Sampson Cty Ctl Laundry	93 OSP 1804	West	11/30/94	
Richard Hopkins v. Department of Correction	94 OSP 0041	Chess	06/16/94	
Alfred B. Hunt v. Department of Correction	94 OSP 0243	Reilly	04/20/94	
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E. Wayne Irvin, D.D.S. v. Div. of Prisons, Department of Correction	94 OSP 0334	Chess	10/03/94	
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Thomas W. Creswell, Lisa K. Bradley v. Department of Correction	94 OSP 0408*	Chess	09/28/94	
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Marietta A. Stancil v. Department of Correction	94 OSP 0652	West	11/22/94	
Edward E. Hodge v. Department of Correction	94 OSP 0829	Nesnow	09/15/94	
Phyllis K. Cameron v. Department of Correction	94 OSP 0896	Nesnow	10/27/94	
Brenda Yvonne Ewell v. Department of Correction	94 OSP 0959	Gray	12/12/94	
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<i>Elizabeth City State University</i>				
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John Franklin Simpson & Wayne Tyrone Barclift v. Eliz. City St. U.	93 OSP 0358* ⁴³	Mann	01/30/95	
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<i>Fayetteville State University</i>				
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Roscoe L. Williams v. Fayetteville State University	93 OSP 0487	West	06/22/94	
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Violet P. Kelly v. Craven Cty. Dept. of Social Services & Craven Cty.	93 OSP 1805	Reilly	07/05/94	
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<i>Durham County Department of Social Services</i>				
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<i>Haywood County Department of Social Services</i>				
Dorothy Morrow v. Haywood County Department of Social Services	94 OSP 0186	West	06/17/94	
<i>Pamlico County Department of Social Services</i>				
Mrs. Dietra C. Jones v. Pamlico Department of Social Services	94 OSP 0251	Chess	08/09/94	
<i>Lee County Health Department</i>				
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Yvonne G. Johnson v. Blue Ridge Mental Health	93 OSP 1604	Becton	03/18/94	
<i>Sandhills Center for Mental Health, Developmental Disabilities, and Substance Abuse Services</i>				
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<i>Wayne County Department of Social Services</i>				
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Brently Jean Carr, Nancy Carol Carter v. Wayne County/Wayne County Department of Social Services	94 OSP 0540*	Mann	11/07/94	
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Albert S. Provenzano v. N.C. State University	92 OSP 0519 ^{#4}	Nesnow	02/14/95	
Laura K. Reynolds v. N.C. State University - Dept. of Public Safety	92 OSP 0828	Morgan	05/26/94	
Albert S. Provenzano v. N.C. State University	93 OSP 0594 ^{#4}	Nesnow	02/14/95	
Ashraf G. Khalil v. N.C.S.U.	93 OSP 1666	Nesnow	09/19/94	
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Patsy E. Harris v. N.C. State University	94 OSP 0845	Nesnow	02/10/95	
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Betsy Johnston Powell v. Department of Transportation	93 OSP 0550	Morrison	03/28/94	
Arnold Craig v. Samuel Hunt, Secretary Department of Transportation	93 OSP 0586	Nesnow	07/11/94	
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Clyde Lem Hairston v. Department of Transportation	93 OSP 0944	Chess	02/28/94	
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RAYMOND G. GURLEY,
Petitioner,

V.

**THE BOARD OF TRUSTEES OF THE
TEACHERS' AND STATE EMPLOYEES'
RETIREMENT SYSTEMS,
Respondent.**

RECOMMENDED DECISION

THIS CAUSE came on for hearing before Beecher R. Gray, Administrative Law Judge, on the 10th day of January 1995, at the Wayne County Courthouse in Goldsboro, Wayne County, North Carolina, upon the Petition of Raymond G. Gurley, Petitioner, contesting a determination of the Respondent, The Board of Trustees of the Teachers' and State Employees' Retirement System, not to include certain payments in the calculation of Petitioner's retirement benefits. Upon the call of the case the Petitioner was present represented by H. Jack Edwards, Attorney at Law, and J. Marshall Barnes, III, Deputy Director of Respondent was present and represented by Alexander McC. Peters, Special Deputy Attorney General. Based upon a review of the record and after hearing all evidence presented by the parties, the Court makes the following FINDINGS OF FACT:

1. The Petitioner, Raymond G. Gurley, is a resident of Wayne County, North Carolina, and is now retired from his former employment with the Wayne County Public Schools.
2. Prior to January 1, 1992, Petitioner was employed with the former Wayne County Board of Education for approximately twenty eight years. He was initially hired as a teacher and coach, then served as a school principal and thereafter, for approximately eighteen years, as Assistant Superintendent in charge of Auxiliary Services for the Wayne County School System.
3. On April 22, 1991, Petitioner entered into a Contract of Employment with the Wayne County Board of Education as an Assistant Superintendent for a four year term commencing July 1, 1991, and terminating on June 30, 1995.
4. Under the terms of the Contract of Employment dated April 22, 1991, Petitioner was to be paid an annual salary based on the State Salary Schedule for Assistant Superintendents adopted by the State Board of Education and in addition was to receive annually a supplement paid monthly from local funds, which amounted to in excess of \$14,100.00 during the first year of the contract. The Employment Contract further provided that the Board of Education would review the amount of the local supplement at the end of each year during the contract to determine if there should be an increase for the next year.
5. That in his position as Assistant Superintendent of the Wayne County Schools, prior to January, 1992, Petitioner was responsible for all new construction and renovation projects and the maintenance for the twenty school campuses located in the former Wayne County School System. His department had approximately forty one employees, a maintenance facility and thirty maintenance vehicles. The County School System had about one million square feet of total floor space to be maintained and served some fourteen thousand students.
6. On January 1, 1992, the former Wayne County Schools merged with the former Goldsboro City Schools to form the Wayne County Public School System.

7. Petitioner continued to be employed in the same position with the merged Wayne County Board of Education under the April 22, 1991, Contract of Employment.

8. That as a result of the merger of the two school systems the Petitioner, as Assistant Superintendent for Auxiliary Services, assumed responsibility for the maintenance of six additional school campuses and a central office complex. The maintenance department increased from forty one to sixty employees with fifteen additional maintenance vehicles. The combined school systems had one million three hundred fifty thousand square feet of floor space to be maintained and served eighteen thousand five hundred students. In addition, Petitioner assumed responsibility for several major renovation projects that were in progress in the former City School System.

9. The supervising of all maintenance, renovation work and new construction for the merged school system was the sole responsibility of the Petitioner as there was no employee of the former City School System to share these responsibilities in the merged system as was the case in other areas such as finance and personnel.

10. Petitioner did not receive any increase in his salary at the time of the merger of the two school systems to compensate him for the increased duties and responsibilities of his position.

11. That even though the merged Board of Education assumed responsibility for the Contract of Employment dated April 22, 1991, there was no review of the salary paid Petitioner from local funds at the end of the 1991-1992 school year nor at the end of the 1992-1993 school year, as required by the Contract.

12. Prior to the merger of the school systems, Jimmy Wells was employed with the former County School System as Director of Maintenance at an annual salary of approximately \$37,000.00. Mr. Wells reported to and was under the direct supervision of the Petitioner.

13. The salary of Jimmy Wells as Director of Maintenance was determined by a schedule established by the State Board of Education and his salary was paid totally by the State.

14. After the merger of the Wayne County and Goldsboro City School Systems, Jim Wells retained the position of Maintenance Director with the merged school system under the supervision of Petitioner. However, after the merger Mr. Wells salary increased to an amount in excess of \$50,000.00 under the State salary schedule to compensate him for his additional duties and responsibilities under the merged system.

15. That during the calendar year 1992, the new Wayne County Public School System was governed by an interim Board of Education consisting of seven members from each of the former City and County Boards of Education. During this interim period no changes were made to Petitioner's salary.

16. In January, 1993, a seven member elected Board of Education replaced the interim Board of Education as the governing body of the school system.

17. Beginning in February 1993, Petitioner began discussions with the Superintendent of Schools and the Finance Committee of the Wayne County Board of Education concerning an increase in the salary he was receiving to compensate Petitioner for the increased duties and responsibilities of his position with the merged school system.

18. That the discussions concerning Petitioner's salary continued through the calendar year 1993, and culminated with a new Contract of Employment dated February 1, 1994.

19. At one point in the salary discussions, Petitioner requested the Board of Education consider changing his position from that of Assistant Superintendent to Associate Superintendent which would have resulted in some increase in that part of his salary paid by the State, but this was never approved by the Board of Education.

20. The Wayne County Board of Education begin looking at the salaries and positions of all employees of the merged school system in February, 1993, and continued their study and reorganization of personnel through May of 1994. The Petitioner's position was not acted on during this process until February of 1994.

21. In 1990 Petitioner had major back surgery and in October of 1992, he had knee replacement surgery. At the present time Petitioner is scheduled to have a second knee replacement surgery. In addition, Petitioner has high blood pressure and an arthritic condition for which he takes medication.

22. As a result of Petitioner's concern with his medical problems, he had discussions with Darron Flowers, Superintendent of the Wayne County Public Schools, in the Fall of 1993 about possible early retirement.

23. That the discussion with Superintendent Flowers was not part of the Petitioner's request for an increase in salary, which request was based on the increase in his duties and responsibilities resulting from the merger of the two school systems.

24. On February 17, 1994, Petitioner presented a letter to Mrs. Peggy Massengill, Chairman of the Wayne County Board of Education, requesting early retirement effective June 30, 1994, and asking that his salary be increased by the amount of \$6,000.00 per month for the period extending from February, 1994, through June, 1994.

25. Petitioner's request for an early retirement was based solely on his concern that he might not be able to continue his job performance due to his medical problems.

26. The salary adjustment requested by Petitioner in his letter to Ms. Massengill was determined by him based on an increase in salary of \$1,000.00 per month for the 30 months from the merger of the schools on January 1, 1992, through his retirement on June 30, 1994. Petitioner believed he was due this salary adjustment as a result of the increased duties and responsibilities of his position resulting from the merger of the school systems.

27. The Wayne County Board of Education approved a new Contract of Employment with Petitioner, effective February 1, 1994, for a term commencing February 1, 1994, and ending June 30, 1994.

28. The new Contract of Employment provided that Petitioner would receive a base salary as determined by the State Salary Schedule for Assistant Superintendents adopted by the State Board of Education and that Petitioner would also receive as part of his salary a monthly local supplement in the amount of \$7,488.66.

29. That the Contract of Employment effective February 1, 1994, did not make any provision for the payment to Petitioner of any consideration for the stated purpose of purchasing any remaining contractual rights under the Contract of Employment dated April 22, 1991.

30. Petitioner never had any discussions with the Wayne County Board of Education concerning the purchase or buy out of any remaining contractual rights under the Contract of Employment dated April 22, 1991, nor did Petitioner ever make such a request of the Board of Education.

31. Prior to preparing the letter to Ms. Massengill, Petitioner talked with Darron Flowers, Superintendent of the Wayne County Public Schools, to determine if there would be any problem with the Retirement System accepting the retroactive salary if paid over a five month period at the rate of \$6,000.00 per month.

32. In the presence of Petitioner, Superintendent Darron Flowers called the Retirement System Office and inquired as to whether payment of the salary to Petitioner over a five month period would cause any problems. Superintendent Flowers related to Petitioner that the individual he talked with in the Retirement

System Office advised that the large amount of the increased payment would raise a flag with the Retirement System, but that if the Superintendent would verify that the payment was, in fact, salary there would be no problem with the Retirement System accepting the same.

33. Petitioner relied on the information he received from the Retirement System through Superintendent Flowers in making his request to the Board of Education in the Letter to Ms. Massengill. Petitioner would not have requested the salary adjustment and early retirement as set out in his letter to Ms. Massengill if he had known there would be a problem with the Retirement System accepting the salary for the purpose of calculating his retirement benefits.

34. According to Mr. James Parker, a member of the Wayne County Board of Education and Chairman of the Finance Committee of the Board during the discussions and actions on Petitioner's salary, the \$6,000.00 per month paid Petitioner from February 1, 1994, through June 30, 1994, was intended as a salary adjustment recognizing the increase in the duties and responsibilities of Petitioner as a result of the merger of the two school systems.

35. The Wayne County Board of Education acknowledged by a Resolution adopted in June of 1994, that the salary adjustment for Petitioner was intended to be retroactive and was to fairly compensate Petitioner for his services considering the increase in his duties and responsibilities resulting from the merger of the City and County School Systems.

36. The additional \$6,000.00 per month paid Petitioner under the Contract of Employment effective February 1, 1994, was fair and reasonable compensation paid by the Wayne County Board of Education to Petitioner for services rendered to the Board of Education following the merger of the former City and County School Systems.

37. That following the merger of the two school systems, the Wayne County Board of Education did agree to pay a lump sum to Jean Hayslip, a former Assistant Superintendent with the Goldsboro City Schools whose services were not needed in the merged system, for the relinquishing of the balance of her contract term.

38. That Darron Flowers was an Associate Superintendent with the former Wayne County School System with a four year contract that expired on June 30, 1995; that on March 15, 1993, the merged Wayne County Board of Education entered into a new Contract of Employment with Darron Flowers to serve as Superintendent of the merged Wayne County Public School System through June 30, 1994; and that the new Contract of Employment with Mr. Flowers specifically provided that he would be paid a lump sum at the end of the new contract period for the relinquishment of his rights under the Contract of Employment with the former County Board of Education, including the final year of that contract.

39. That the only occasions that the merged Wayne County Board of Education agreed to pay for the relinquishment of the remaining term of a prior Contract of Employment have been in the situation involving Ms. Hayslip and Mr. Flowers wherein the Board of Education agreed to make a lump sum payment specifically for this purpose; and that no such agreement was ever made by the Wayne County Board of Education with Petitioner.

40. By letter dated April 25, 1994, J. Marshall Barnes, III, Deputy Director of the Retirement Systems Division wrote to Mr. William H. Troutman, Assistant Superintendent, Fiscal Affairs, Wayne County Public Schools, advising the School System that his office had determined that the \$6,000.00 payment to Petitioner was not for salary or wages earned for services rendered as an employee but was deemed to be consideration for relinquishment of previous employment and contract rights.

41. Upon learning that the State Retirement System had instructed the Wayne County Board of Education not to include the \$6,000.00 in salary in the schools payroll report to the Retirement Systems, Petitioner wrote the Superintendent, William Darron Flowers, on May 6, 1994, and objected to the exclusion of this part of his salary in the reports to the State Retirement System.

42. Thereafter, Petitioner, James C. Parker and Petitioner's Attorney corresponded with J. Marshall Barnes, III, in an effort to provide information to show that the \$6,000.00 additional monthly payment was, in fact, intended as salary for services rendered by Petitioner in his employment.

43. That the additional information provided to Mr. Barnes did not change the position taken by the retirement system as evidenced by letters from J. Marshall Barnes, III, to Petitioner dated June 22, 1994, and to H. Jack Edwards, Attorney for Petitioner dated July 13, 1994.

44. Petitioner thereafter filed a Petition for a Contested Case hearing on August 1, 1994.

45. Petitioner receives less in monthly retirement benefits as a result of the determination by the Respondent not to include the \$6,000.00 monthly payment from the Wayne County Board of Education during the five months beginning February 1, 1994, and ending June 30, 1994, in the calculation of Petitioner's retirement benefits.

Based upon the foregoing FINDINGS OF FACT, the Court makes the following CONCLUSIONS OF LAW:

1. That this proceeding is subject to the provisions of Chapter 150B of the North Carolina General Statutes.

2. Petitioner is a member of the Retirement System for Teachers and State Employees as defined in Article I of Chapter 135 of the North Carolina General Statutes.

3. The amount of \$6,000.00 per month paid to Petitioner by the Wayne County Board of Education for the five month period beginning February 1, 1994, and ending June 30, 1994, was compensation earned for service as an employee or teacher as defined in North Carolina General Statute 135-1(7a).

4. Petitioner is entitled to have the additional compensation in the amount of \$6,000.00 per month paid to him by the Wayne County Board of Education for the period beginning February 1, 1994, and ending June 30, 1994, included by the Respondent in calculating his retirement benefits under the provisions of Article I of Chapter 135 of the North Carolina General Statutes.

NOW, THEREFORE, IT IS HEREBY RECOMMENDED that the salary in the amount of \$6,000.00 per month paid to Petitioner, Raymond G. Gurley, by the Wayne County Board of Education, for the five month period beginning February 1, 1994, and ending June 30, 1994, shall be included by the Respondent, The Board of Trustees of The Teachers' and State Employees' Retirement System, in the calculation of Petitioner's retirement benefits.

IT IS FURTHER RECOMMENDED, that Petitioner receive any increase in benefits that may result from the inclusion of the additional compensation in calculating his retirement benefits retroactive to the date of his retirement.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

CONTESTED CASE DECISIONS

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the Board of Trustees of the Teachers' and State Employees' Retirement System.

Entered this 9th day of February, 1995.

Beecher R. Gray
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
94 EHR 1035

**EDNA M. BLAKE
KAHOOTS DANCE CLUB,
Petitioner,**

V.

**N.C. DEPARTMENT OF ENVIRONMENT,
HEALTH & NATURAL RESOURCES,
and
ONslow COUNTY HEALTH
DEPARTMENT
Respondents.**

RECOMMENDED DECISION

This matter was heard before Brenda B. Becton, Administrative Law Judge, on January 11, 1995, in Jacksonville, North Carolina.

APPEARANCES

For Petitioner: Pro se.

For Respondent: Grady L. Balentine, Jr., Associate
Attorney General, North Carolina
Department of Justice, Raleigh, N.C.

ISSUE

Whether the Respondent properly issued an intent to suspend the Petitioner's Certificate of Completion.

STATUTES AND RULES INVOLVED

N.C. Gen. Stat. §130A-333, et seq.
15A NCAC 18A .1900, et seq.

RULING OF MOTION

Since authorized agents of the Onslow County Health Department act as agents of the North Carolina Department of Environment, Health, and Natural Resources when applying and enforcing the laws and rules governing sewage treatment and disposal systems, the Department of Environment, Health, and Natural Resources is a necessary party to this proceeding and the Respondent moved that the caption be amended to provide for the naming of the Department of Environment, Health, and Natural Resources as a Respondent. Said motion is allowed.

EXHIBITS

The following exhibits offered by the Respondent were received in evidence:

- R1. Certificate of Completion #4524 dated November 1, 1976.
- R2. Application for Improvements Permit dated April 29, 1994.

- R3. Soil Site Evaluation for On-Site Wastewater System dated April 29, 1994.
- R4. Certificate of Completion #4524 with conditions dated May 2, 1994.
- R5. Improvement Permit dated May 5, 1994.
- R6. Letter to Edna Blake from Walter Giese dated July 20, 1994.
- R7. Notice of intent to suspend Certificate of Completion dated September 1, 1994.

FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

- 1. The Petitioner operates an establishment known as Kahoots Dance Club.
- 2. In the Spring of 1994, the Onslow County Health Department was contacted by an inspector (either building or electrical) regarding the capacity of the septic system on the property where Kahoots is located.
- 3. The Petitioner has an improvement permit for a ground absorption sewage system which was initially issued in 1976 for business use with two bathrooms (Respondent's exhibit 1). That permit indicates that there is a one thousand gallon septic tank on the property, but it does not include any limitations regarding the number of permissible gallons of sewage per day.
- 4. After receiving the request for information from the inspector, the Health Department began an investigation into the type and capacity of the Petitioner's septic system.
- 5. On April 29, 1994, the Petitioner made an application for another improvement permit.
- 6. On that same date, Walter Giese, an Environmental Health Specialist with the Health Department, visited the Petitioner's property for the purpose of conducting a site evaluation for an on-site wastewater system.
- 7. Mr. Giese made four 4 feet deep borings on the Petitioner's property and examined the existing septic system.
- 8. Mr. Giese determined that the existing septic system was too deep in the ground to permit any modification under the rules currently applicable to ground absorption systems.
- 9. After examining the soil samples, Mr. Giese determined that the property was suitable for a 640 gallons a day septic with a maximum seating capacity of 32 patrons and 3 employees.
- 10. Subsequent to Mr. Giese's examination of the existing septic system, a condition was added to the 1976 improvement permit. The condition was as follows:

This permit is for a bar/cocktail lounge. There shall be no more than 12 total seats (chairs, stools, booth seats or any combination thereof) and standing room in the establishment. There shall be no food service.
- 11. On May 5, 1994, another Improvement Permit was issued for the Petitioner's property that allowed for the installation of a 640 gallons a day septic with a maximum seating capacity of 32 and 3 employees.

12. Prior to the Petitioner acquiring the property where Kahoots is located, the property has been used as an auction house which could seat approximately 300 people and a marble plant.
13. The Respondent's witnesses testified that did not know what use the premises had been put to immediately prior to the Petitioner's acquisition of the property.
14. The Petitioner has never had any problem with the septic system malfunctioning.
15. Kahoots has approximately 250 members. On weekends, there were often more than twelve chairs on the premises.
16. On September 1, 1994, Mr. Giese wrote the Petitioner a letter notifying her of the Health Department's intent to suspend the "Certificate of Completion issued on May 2, 1994" for Kahoots.
17. The Petitioner filed a Petition for a Contested Case Hearing on September 29, 1994.
18. The Respondent's rules regarding the applicability of the sewage treatment and disposal rules codified in the North Carolina Administrative Code provide:

The provisions of this Section shall not apply to properly functioning sewage collection, treatment, and disposal systems in use or for which a valid permit to install a system has been issued prior to July 1, 1977. This provision is applicable only where the sewage flow and sewage characteristics are unchanged. This provision does not affect the requirements for system operation, maintenance, and management in accordance with Rule .1961 of this section.

15A NCAC 18A .1962 (July 9, 1991).

19. There is no evidence that the Petitioner's usage will change the sewage flow and characteristics from that which previously existed on the premises.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings.
2. North Carolina General Statutes §130A-335(b) requires that all ground absorption wastewater systems shall be regulated by the Department of Environment, Health, and Natural Resources under rules adopted by the Commission for Health Services.
3. The Commission for Health Services has adopted the rules for sewage treatment and disposal systems codified at 15A NCAC 18A .1900.
4. The rules for sewage treatment and disposal systems codified at 15A NCAC 18A .1900 include what is known as a grandfather clause at 15A NCAC 18A .1962. Pursuant to the grandfather clause certain properly functioning septic systems are exempted from the current wastewater disposal rules.
5. Since the Petitioner's septic system was permitted in October, 1976, it would be subject to grandfather clause if it is properly functioning and there has not been a change in the sewage flow and characteristics.
6. The evidence indicates that the premises were originally permitted for business usage. The Petitioner's operation of a bar/cocktail lounge falls within the business usage designation.

7. There is no evidence regarding sewage flow and characteristics. Thus, there can be no conclusion that the flow and characteristics have changed.
8. In the absence of evidence that the sewage flow and characteristics have changed, the grandfather provisions of subsection .1962 of the Respondent's rules regarding sewage treatment and disposal systems for which valid permits have been issued prior to July 1, 1977 apply to the Petitioner.
9. Pursuant to the grandfather provisions, the Petitioner does not have to comply with current rules and regulations regarding sewage treatment and disposal systems so long as the current system is properly functioning and so long as the sewage flow and characteristics do not change.
10. Since the Petitioner's septic system is subject to the Respondent's grandfather provisions, the conditions added to the permit on May 2, 1994 are invalid.

RECOMMENDED DECISION

The North Carolina Department of Environment, Health, and Natural Resources will make the Final Decision in this contested case. It is recommended that the agency adopt the Findings of Fact and Conclusions of Law set forth above and rescind its decision to suspend the Petitioner's Certificate of Completion.

ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

NOTICE

Before the agency makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

This the 10th day of February, 1995.

Brenda B. Becton
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
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15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
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Note: Title 21 contains the chapters of the various occupational licensing boards.

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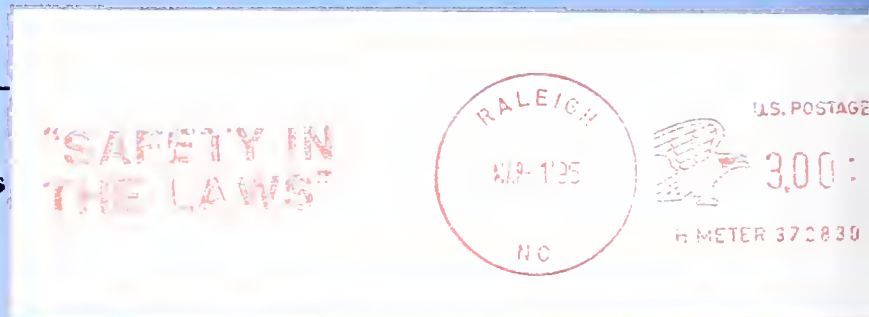
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